

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 2010-21, page 551.

This document contains the annual report to the public concerning Advance Pricing Agreements (APAs) and the experience of the APA Program during calendar year 2009. This document does not provide guidance regarding the application of the arm's length standard. Instead, it reports on the structure and activities of the APA Program.

INCOME TAX

Notice 2010-27, page 531.

This notice provides adjusted limitations on housing for tax year 2010 for purposes of section 911 of the Code. Notices 2006-87, 2007-25, 2007-77, and 2008-107 superseded.

Notice 2010-28, page 541.

This notice provides interim guidance on stripping transactions for qualified tax credit bonds under section 54A of the Code and on certain income tax accounting matters associated with holding and stripping qualified tax credit bonds. In addition, this notice describes associated information reporting requirements and solicits public comments.

Notice 2010-29, page 547.

This notice provides interim rules to the issuers of variable annuity contracts on issues that arise under sections 807 and 816 of the Code as a result of the adoption of Actuarial Guideline XLIII.

EMPLOYEE PLANS

Announcement 2010-20, page 551.

This document announces that the Service will soon issue opinion and advisory letters for pre-approved (*i.e.*, master and prototype (M&P) and volume submitter (VS)) defined benefit plans that were restated for the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and other changes in plan qualification requirements listed in Notice 2007-3 ("the 2006 Cumulative List") and that were filed with the Service. The Service expects to issue the letters on March 31, 2010, or, in some cases, as soon as possible thereafter. A plan that receives a favorable letter with respect to its restatement for EGTRRA and the 2006 Cumulative List is referred to as an "EGTRRA-approved plan." Employers using these pre-approved plan documents to restate a plan for EGTRRA and the 2006 Cumulative List will be required to adopt the EGTRRA-approved plan document by April 30, 2012. The Service will accept applications for individual determination letters submitted by adopters of these pre-approved plans starting on May 1, 2010.

EXEMPT ORGANIZATIONS

Announcement 2010-24, page 587.

The IRS has revoked its determinations that Alpha Assistance, Inc., of Desoto, TX, and Norcross, GA; DPA Alliance Corporation of Provo, UT; Interpreter Referral Service of Chicago, IL; and the Knapp Foundation of Provo, UT, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

Announcements of Disbarments and Suspensions begin on page 588.
Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2010

Notice 2010-27

SECTION 1. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code (Code) for specific locations for 2010. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

SECTION 2. BACKGROUND

Section 911(a) of the Code allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. Section 911(c)(1) defines the term "housing cost amount" as an amount equal to the excess of (A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under section 911(c)(2), over (B) 16 percent of the exclusion amount (computed on a daily

basis) in effect under section 911(b)(2)(D) for the calendar year in which such taxable year begins (\$250.68 per day for 2010, or \$91,500 for the full year), multiplied by the number of days of that taxable year within the applicable period described in section 911(d)(1). The applicable period is the period during which the individual meets the tax home requirement of section 911(d)(1) and either the *bona fide* residence requirement of section 911(d)(1)(A) or the physical presence requirement of section 911(d)(1)(B). Assuming that the entire taxable year of a qualified individual is within the applicable period, the section 911(c)(1)(B) amount for 2010 is \$14,640 (\$91,500 x .16).

Section 911(c)(2)(A) of the Code limits the housing expenses taken into account in section 911(c)(1)(A) to an amount equal to (i) 30 percent (adjusted as may be provided under the Secretary's authority under section 911(c)(2)(B)) of the amount in effect under section 911(b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by (ii) the number of days of that taxable year within the applicable period described in section 911(d)(1). Thus, under this general limitation, a qualified individual whose entire

taxable year is within the applicable period is limited to maximum housing expenses of \$27,450 (\$91,500 x .30) in 2010.

Section 911(c)(2)(B) of the Code authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) based on geographic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Internal Revenue Service (IRS) and the Treasury Department published Notice 2006-87, 2006-2 C.B. 766, and Notice 2007-25, 2007-1 C.B. 760, for 2006, Notice 2007-77, 2007-2 C.B. 735, for 2007, and Notice 2008-107, 2008-50 I.R.B. 1265, for 2008, to provide adjustments to the limitation on housing expenses for qualified individuals incurring housing expenses in countries with high housing costs relative to housing costs in the United States.

SECTION 3. TABLE OF ADJUSTED LIMITATIONS FOR 2010

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of \$27,450) for 2010.

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Angola	Luanda	230.14	84,000
Argentina	Buenos Aires	154.79	56,500
Australia	Adelaide	83.29	30,400
Australia	Brisbane	82.47	30,100
Australia	Gold Coast	82.47	30,100
Australia	Melbourne	105.48	38,500
Australia	Oakey	82.47	30,100
Australia	Perth	112.88	41,200
Australia	Sydney	89.81	32,782
Australia	Toowoomba	82.47	30,100
Austria	Vienna	96.99	35,400
Bahamas, The	Nassau	136.16	49,700
Bahrain	Bahrain	120.55	44,000
Barbados	Barbados	103.29	37,700
Belgium	Antwerp	109.59	40,000

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Belgium	Brussels	144.66	52,800
Belgium	Gosselies	129.04	47,100
Belgium	Hoogbuul	109.59	40,000
Belgium	Mons	129.04	47,100
Belgium	SHAPE/Chievres	129.04	47,100
Bermuda	Bermuda	246.58	90,000
Bosnia-Herzegovina	Sarajevo	92.05	33,600
Brazil	Brasilia	151.51	55,300
Brazil	Rio de Janeiro	96.16	35,100
Brazil	Sao Paulo	127.40	46,500
Canada	Calgary	105.75	38,600
Canada	Dartmouth	92.60	33,800
Canada	Edmonton	96.16	35,100
Canada	Halifax	92.60	33,800
Canada	London, Ontario	77.81	28,400
Canada	Montreal	156.71	57,200
Canada	Ottawa	129.32	47,200
Canada	Toronto	128.22	46,800
Canada	Vancouver	122.74	44,800
Canada	Victoria	90.96	33,200
Canada	Winnipeg	84.66	30,900
Cayman Islands	Grand Cayman	131.51	48,000
Chile	Santiago	136.99	50,000
China	Beijing	195.07	71,200
China	Hong Kong	313.15	114,300
China	Shanghai	156.17	57,001
Colombia	Bogota	148.22	54,100
Colombia	All cities other than Bogota and Barranquilla	135.34	49,400
Denmark	Copenhagen	119.74	43,704
Dominican Republic	Santo Domingo	124.66	45,500
Ecuador	Guayaquil	84.38	30,800
Ecuador	Quito	83.56	30,500
Estonia	Tallinn	127.67	46,600
France	Garches	257.26	93,900
France	Le Havre	108.22	39,500
France	Lyon	146.58	53,500
France	Marseille	136.99	50,000
France	Montpellier	121.37	44,300

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
France	Paris	257.26	93,900
France	Sevres	257.26	93,900
France	Suresnes	257.26	93,900
France	Versailles	257.26	93,900
Germany	Babenhausen	126.30	46,100
Germany	Bad Aibling	107.67	39,300
Germany	Bad Nauheim	100.82	36,800
Germany	Baumholder	120.55	44,000
Germany	Berlin	154.25	56,300
Germany	Birkenfeld	120.55	44,000
Germany	Boeblingen	153.15	55,900
Germany	Bonn	115.07	42,000
Germany	Butzbach	98.63	36,000
Germany	Darmstadt	126.30	46,100
Germany	Erlangen	79.73	29,100
Germany	Frankfurt am Main	131.78	48,100
Germany	Friedberg	100.82	36,800
Germany	Fuerth	79.73	29,100
Germany	Garmisch-Partenkirchen	115.07	42,000
Germany	Geilenkirchen	82.19	30,000
Germany	Gelnhausen	158.90	58,000
Germany	Germersheim	95.34	34,800
Germany	Giebelstadt	109.04	39,800
Germany	Giessen	98.63	36,000
Germany	Grafenwoehr	124.11	45,300
Germany	Hanau	158.90	58,000
Germany	Hannover	94.25	34,400
Germany	Heidelberg	119.45	43,600
Germany	Idar-Oberstein	120.55	44,000
Germany	Ingolstadt	177.81	64,900
Germany	Kaiserslautern, Landkreis	154.52	56,400
Germany	Kitzingen	109.04	39,800
Germany	Leimen	119.45	43,600
Germany	Ludwigsburg	153.15	55,900
Germany	Mainz	170.41	62,200
Germany	Mannheim	119.45	43,600
Germany	Munich	177.81	64,900
Germany	Nellingen	153.15	55,900
Germany	Neubruecke	120.55	44,000

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Germany	Nuernberg	79.73	29,100
Germany	Ober Ramstadt	126.30	46,100
Germany	Oberammergau	115.07	42,000
Germany	Pirmasens	154.52	56,400
Germany	Rheinau	119.45	43,600
Germany	Schwabach	79.73	29,100
Germany	Schwetzingen	119.45	43,600
Germany	Seckenheim	119.45	43,600
Germany	Sembach	154.52	56,400
Germany	Stuttgart	153.15	55,900
Germany	Vilseck	124.11	45,300
Germany	Wahn	115.07	42,000
Germany	Wertheim	109.04	39,800
Germany	Wiesbaden	170.41	62,200
Germany	Wuerzburg	109.04	39,800
Germany	Zimdorf	79.73	29,100
Germany	Zweibrueken	154.52	56,400
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Germersheim, Giebelstadt, Giessen, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zimdorf, and Zweibrueken	122.19	44,600

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Ghana	Accra	98.63	36,000
Greece	Argyroupolis	98.36	35,900
Greece	Athens	120.55	44,000
Greece	Elefsis	120.55	44,000
Greece	Ellinikon	120.55	44,000
Greece	Mt. Hortiatiss	98.36	35,900
Greece	Mt. Parnis	120.55	44,000
Greece	Mt. Pateras	120.55	44,000
Greece	Nea Makri	120.55	44,000
Greece	Perivolaki	98.36	35,900
Greece	Piraeus	120.55	44,000
Greece	Souda Bay (Crete)	78.63	28,700
Greece	Tanagra	120.55	44,000
Greece	Thessaloniki	98.36	35,900
Guatemala	Guatemala City	108.49	39,600
Guyana	Georgetown	95.89	35,000
Holy See, The	Holy See, The	171.23	62,500
Hungary	Budapest	89.04	32,500
Hungary	Papa	121.92	44,500
India	Mumbai	186.08	67,920
India	New Delhi	82.88	30,252
Indonesia	Jakarta	103.50	37,776
Ireland	Dublin	149.04	54,400
Ireland	Limerick	84.11	30,700
Ireland	Shannon Area	114.52	41,800
Israel	Tel Aviv	139.18	50,800
Italy	Catania	100.27	36,600
Italy	Genoa	110.68	40,400
Italy	Gioia Tauro	85.48	31,200
Italy	La Spezia	110.68	40,400
Italy	Leghorn	107.40	39,200
Italy	Milan	256.16	93,500
Italy	Naples	162.47	59,300
Italy	Pisa	107.40	39,200
Italy	Pordenone-Aviano	130.14	47,500
Italy	Rome	171.23	62,500
Italy	Sardinia	87.95	32,100
Italy	Sigonella	100.27	36,600
Italy	Turin	128.22	46,800

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Italy	Verona	81.92	29,900
Italy	Vicenza	131.23	47,900
Italy	All cities other than Avellino, Brindisi, Catania, Florence, Gaeta, Genoa, Gioia Tauro, La Spezia, Leghorn, Milan, Mount Vergine, Naples, Nettuno, Pisa, Pordenone-Aviano, Rome, Sardinia, Sigonella, Turin, Verona, and Vicenza.	103.01	37,600
Jamaica	Kingston	112.88	41,200
Japan	Akashi	98.63	36,000
Japan	Akizuki	86.85	31,700
Japan	Atsugi	124.66	45,500
Japan	Camp Zama	124.66	45,500
Japan	Chiba-Ken	124.66	45,500
Japan	Fussa	124.66	45,500
Japan	Gifu	80.00	29,200
Japan	Gotemba	94.25	34,400
Japan	Haneda	124.66	45,500
Japan	Iwakuni	88.77	32,400
Japan	Kanagawa-Ken	124.66	45,500
Japan	Komaki	80.00	29,200
Japan	Machidi-Shi	124.66	45,500
Japan	Misawa	108.22	39,500
Japan	Nagoya	103.52	37,786
Japan	Okinawa Prefecture	154.52	56,400
Japan	Osaka-Kobe	248.39	90,664
Japan	Sagamihara	124.66	45,500
Japan	Saitama-Ken	124.66	45,500
Japan	Sasebo	103.29	37,700
Japan	Tachikawa	124.66	45,500
Japan	Tokyo	295.62	107,900
Japan	Tokyo-to	124.66	45,500
Japan	Yokohama	162.19	59,200
Japan	Yokosuka	150.41	54,900
Japan	Yokota	124.66	45,500
Kazakhstan	Almaty	131.51	48,000
Korea	Camp Carroll	77.53	28,300
Korea	Camp Colbern	140.82	51,400
Korea	Camp Market	140.82	51,400
Korea	Camp Mercer	140.82	51,400

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Korea	K-16	140.82	51,400
Korea	Kimpo Airfield	140.82	51,400
Korea	Munsan	85.21	31,100
Korea	Osan AB	87.95	32,100
Korea	Pyongtaek	86.30	31,500
Korea	Seoul	140.82	51,400
Korea	Suwon	140.82	51,400
Korea	Taegu	85.48	31,200
Korea	Uijongbu	82.47	30,100
Korea	Waegwan	77.53	28,300
Korea	All cities other than Ammo Depot #9, Camp Carroll, Camp Colbern, Camp Market, Camp Mercer, Changwon, Chinhae, Chunchon, K-16, Kimhae, Kimpo Airfield, Kunsun, Kwangju, Munsan, Osan AB, Pusan, Pyongtaek, Seoul, Suwon, Taegu, Tongduchon, Uijongbu, and Waegwan	80.27	29,300
Kuwait	Kuwait City	176.44	64,400
Kuwait	All cities other than Kuwait City	158.08	57,700
Luxembourg	Luxembourg	140.55	51,300
Macedonia	Skopje	96.99	35,400
Malaysia	Kuala Lumpur	126.58	46,200
Malaysia	All cities other than Kuala Lumpur	92.33	33,700
Malta	Malta	131.51	48,000
Mexico	Hermosillo	76.16	27,800
Mexico	Mazatlan	84.93	31,000
Mexico	Merida	103.84	37,900
Mexico	Mexico City	125.21	45,700
Mexico	Monterrey	90.96	33,200
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz	107.95	39,400
Micronesia	Pohnpei	77.26	28,200
Mozambique	Maputo	98.63	36,000
Namibia	Windhoek	87.95	32,100
Netherlands	Amsterdam	144.93	52,900
Netherlands	Aruba	98.63	36,000
Netherlands	Brunssum	117.26	42,800

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Netherlands	Eygelshoven	117.26	42,800
Netherlands	Hague, The	196.44	71,700
Netherlands	Heerlen	117.26	42,800
Netherlands	Hoensbroek	117.26	42,800
Netherlands	Hulsberg	117.26	42,800
Netherlands	Kerkrade	117.26	42,800
Netherlands	Landgraaf	117.26	42,800
Netherlands	Maastricht	117.26	42,800
Netherlands	Papendrecht	123.01	44,900
Netherlands	Rotterdam	123.01	44,900
Netherlands	Schaesburg	117.26	42,800
Netherlands	Schinnen	117.26	42,800
Netherlands	Schiphol	144.93	52,900
Netherlands	Ypenburg	196.44	71,700
Netherlands	All cities other than Amsterdam, Aruba, Brunssum, Coevorden, Eygelshoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg.	104.93	38,300
Netherlands Antilles	Curacao	125.48	45,800
New Zealand	Auckland	97.81	35,700
New Zealand	Wellington	92.60	33,800
Nicaragua	Managua	87.12	31,800
Norway	Oslo	145.21	53,000
Norway	Stavanger	123.56	45,100
Norway	All cities other than Oslo and Stavanger.	103.29	37,700
Panama	Panama City	97.26	35,500
Philippines	Cavite	100.00	36,500
Philippines	Manila	100.00	36,500
Philippines	All cities other than Cavite and Manila	76.44	27,900
Poland	Poland	80.55	29,400
Portugal	Alverca	156.71	57,200
Portugal	Lajes Field	84.11	30,700
Portugal	Lisbon	156.71	57,200
Qatar	Doha	99.35	36,264
Qatar	All cities other than Doha	88.77	32,400
Russia	Moscow	295.89	108,000
Russia	Saint Petersburg	164.38	60,000

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Russia	Sakhalin Island	212.33	77,500
Russia	Vladivostok	212.33	77,500
Russia	Yekaterinburg	129.86	47,400
Rwanda	Kigali	86.30	31,500
Saudi Arabia	Jeddah	84.02	30,667
Saudi Arabia	Riyadh	109.59	40,000
Singapore	Singapore	171.78	62,700
South Africa	Pretoria	107.67	39,300
Spain	Barcelona	111.23	40,600
Spain	Madrid	209.04	76,300
Spain	Rota	120.55	44,000
Spain	Valencia	120.00	43,800
Spain	All cities other than Barcelona, Madrid, Rota, and Valencia	90.68	33,100
Suriname	Paramaribo	90.41	33,000
Switzerland	Bern	169.32	61,800
Switzerland	Geneva	232.60	84,900
Switzerland	Zurich	107.45	39,219
Switzerland	All cities other than Bern, Geneva and Zurich	90.14	32,900
Taiwan	Taipei	126.54	46,188
Thailand	Bangkok	140.00	51,100
Turkey	Ankara	87.95	32,100
Turkey	Elmadag	87.95	32,100
Turkey	Izmir-Cigli	86.58	31,600
Turkey	Manzarali	87.95	32,100
Turkey	Yamanlar	86.58	31,600
Ukraine	Kiev	197.26	72,000
United Arab Emirates	Abu Dhabi	136.13	49,687
United Arab Emirates	Dubai	156.64	57,174
United Kingdom	Basingstoke	112.60	41,099
United Kingdom	Bath	112.33	41,000
United Kingdom	Bracknell	170.14	62,100
United Kingdom	Bristol	106.03	38,700
United Kingdom	Cambridge	117.81	43,000
United Kingdom	Caversham	202.19	73,800
United Kingdom	Cheltenham	147.67	53,900
United Kingdom	Croughton	121.10	44,200
United Kingdom	Fairford	121.10	44,200
United Kingdom	Farnborough	149.86	54,700

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
United Kingdom	Felixstowe	115.07	42,000
United Kingdom	Gibraltar	122.24	44,616
United Kingdom	Harrogate	127.12	46,400
United Kingdom	High Wycombe	170.14	62,100
United Kingdom	Kemble	121.10	44,200
United Kingdom	Lakenheath	150.41	54,900
United Kingdom	Liverpool	106.30	38,800
United Kingdom	London	233.15	85,100
United Kingdom	Loudwater	173.97	63,500
United Kingdom	Menwith Hill	127.12	46,400
United Kingdom	Mildenhall	150.41	54,900
United Kingdom	Oxfordshire	121.10	44,200
United Kingdom	Plymouth	121.10	44,200
United Kingdom	Portsmouth	121.10	44,200
United Kingdom	Reading	170.14	62,100
United Kingdom	Rochester	125.75	45,900
United Kingdom	Southampton	121.10	44,200
United Kingdom	Surrey	132.61	48,402
United Kingdom	Waterbeach	129.59	47,300
United Kingdom	Wiltshire	113.97	41,600
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brough, Bude, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire.	119.45	43,600
Venezuela	Caracas	156.16	57,000
Vietnam	Hanoi	128.22	46,800
Vietnam	Ho Chi Minh City	115.07	42,000

SECTION 4. HOUSING LIMITATION FOR 2009

Except as provided in section 5, the limitation for qualified individuals incurring housing expenses in taxable years

beginning in 2009 is as follows. For taxable years beginning in calendar year 2009, the foreign earned income exclusion amount under § 911(b)(2)(D) is \$91,400. Thus, a qualified individual whose entire 2009 taxable year is within the applicable

period is generally limited to maximum housing expenses of \$27,420 (\$91,400 x .30). Because location amounts were not published for 2009, qualified individuals incurring housing expenses in 2009 in locations listed in the “Table of Adjusted

Limitations for 2008” in Notice 2008–107 should use the amounts found in that table (which can also be found in the Instructions to Form 2555 (2009)) to determine their adjusted limitation for 2009.

SECTION 5. ELECTION TO APPLY 2010 ADJUSTED LIMITATIONS TO 2009 TAXABLE YEAR

For some locations, the limitation on housing expenses provided in section 3 of this notice may be higher than the limitation on housing expenses provided in the “Table of Adjusted Limitations for 2008” in Notice 2008–107. A qualified individual incurring housing expenses in such a location during 2009 may apply the adjusted limitation on housing expenses provided in section 3 of this notice in lieu of the amounts provided in the “Table of Adjusted Limitations for 2008” in Notice 2008–107 (and as set forth in the Instructions to Form 2555 (2009)).

Treasury and the IRS anticipate that future annual notices providing adjustments to housing expense limitations will make a similar election available to qualified individuals that incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations for 2011 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2010 taxable year.

EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2006–87, 2006–2 C.B. 766, Notice 2007–25, 2007–1 C.B. 760, Notice 2007–77, 2007–2 C.B. 735, and Notice 2008–107, 2008–50 I.R.B. 1265.

EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2010. However, as provided in section 5, a taxpayer may elect to apply the 2010 adjusted housing limitations contained in section 3 of this notice to his or her taxable year beginning in 2009.

DRAFTING INFORMATION

The principal author of this notice is Susan E. Massey of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact

Ms. Massey at (202) 622–3840 (not a toll-free call).

Stripping Transactions for Qualified Tax Credit Bonds

Notice 2010–28

SECTION 1. INTRODUCTION

This notice describes regulations that the Treasury Department and the Internal Revenue Service (IRS) expect to issue concerning both stripping transactions for qualified tax credit bonds under section 54A of the Internal Revenue Code and certain income tax accounting matters associated with holding and stripping these bonds. Pending the promulgation and effective date of future administrative or regulatory guidance, this notice provides interim guidance on which taxpayers may rely. In addition, this notice describes anticipated related information reporting requirements and solicits public comments on the interim guidance and the information reporting requirements.

SECTION 2. BACKGROUND

Section 54A(a) provides that a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates during any taxable year is allowed a tax credit for such year in an amount equal to the sum of the credits determined under section 54A(b) with respect to such dates.

Section 54A(d)(1) defines a qualified tax credit bond to include the following types of bonds if they meet applicable requirements: (1) qualified forestry conservation bonds, (2) new clean renewable energy bonds, (3) qualified energy conservation bonds, (4) qualified zone academy bonds, and (5) qualified school construction bonds.

Section 54A(e)(1) provides that the credit allowance dates for a qualified tax credit bond are March 15, June 15, September 15, and December 15 of any year in which the bond is outstanding and the last day on which the bond is outstanding.

Under section 54A(b)(2), the annual credit on a qualified tax credit bond is the product of the applicable credit rate

multiplied by the outstanding face amount of the bond. Subject to special rules in section 54A(b)(4) for short periods, section 54A(b)(1) provides that the amount of credit for any credit allowance date is 25 percent of the annual credit on a qualified tax credit bond.

For holders of new clean renewable energy bonds and qualified energy conservation bonds, section 54C(b) and section 54D(b) limit the amount of the annual credit otherwise determined under section 54A(b) to 70 percent of the amount so determined without regard to section 54C(b) and section 54D(b).

Section 54A(c)(1) generally provides that the credit allowed under section 54A(a) for any taxable year may not exceed the excess of (1) the sum of the regular and the alternative minimum tax liability of the taxpayer, over (2) the sum of certain allowable credits. Under section 54A(c)(2), unused excess credits may be carried forward for use in succeeding taxable years.

Section 54A(f) provides that, for Federal income tax purposes, the credit determined under section 54A(a) is treated as interest that is includible in gross income.

Section 54A(i)(1) provides that, under regulations prescribed by the Secretary, there may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit with respect to that bond. Section 54A(i)(1) further provides that, in case of any such separation, the credit under section 54A is allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond. Section 54A(i)(2) further provides that, in the case of any such separation, the rules of section 1286 are to apply to the qualified tax credit bond as if it were a stripped bond and to the credit under section 54A as if it were a stripped coupon.

SECTION 3. INTERIM GUIDANCE AND RELIANCE

.01 IN GENERAL

Sections 3.02 and 3.03 of this notice describe the substance of regulations that the IRS and the Treasury Department expect to issue. Pending the promulgation and effective date of future administrative

or regulatory guidance, this notice provides interim guidance on which taxpayers may rely with respect to qualified tax credit bonds issued under section 54A. For further information regarding the effective date and scope of application, see Section 7 of this notice.

.02 QUALIFIED TAX CREDIT BONDS—TREATMENT OF THE CREDIT BY HOLDERS

(a) *Allowance of credit*—(1) *General rule.* In general, a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates (as defined in section 54A(e)(1)) of the bond occurring during a taxable year is allowed as a credit against income tax for the taxable year an amount equal to the sum of the credits determined under section 54A(b) with respect to those credit allowance dates. Unless otherwise specifically provided, for purposes of this notice references to the “allowance of a credit” or an “allowed credit” mean the amount of the credit determined under section 54A(b) (as limited by sections 54C(b) and 54D(b)) before application of the limitation under section 54A(c).

(2) *Allowance of a credit treated as a payment of stated interest on a taxable bond.* For Federal income tax purposes, the allowance of a credit on a qualified tax credit bond on a credit allowance date is treated as a payment, in the amount of the allowed credit, of stated interest on a debt obligation the interest on which is includable in gross income. Thus, the allowance of a credit on a bond that has not undergone a stripping transaction is treated as a payment of qualified stated interest (within the meaning of § 1.1273-1(c) of the Income Tax Regulations) to the same extent that a payment of stated interest in cash in the same amount and on the same date would have been so treated.

(3) *Accounting method*—(i) *General rule.* In general, a holder’s regular method of accounting determines when the holder recognizes qualified stated interest income from a qualified tax credit bond. Thus, if the holder of a qualified tax credit bond uses the cash receipts and disbursements method of accounting, interest income in the amount of the allowed credit is generally included in income on the credit allowance date. If the holder of such a

bond uses an accrual method of accounting, this interest income is included in income as it accrues over each accrual period. See § 1.1272-1(b)(1)(ii) to determine the accrual periods and § 1.446-2(b) to determine how qualified stated interest accrues over the accrual period (or periods) to which it is attributable. (For qualified tax credit bonds that have not undergone a stripping transaction, because of the regular quarterly credit allowance dates, the maximum permitted length of the accrual periods is three months.)

(ii) *Other rules with respect to accounting for interest.* Under certain circumstances, other rules may require the holder of a bond (including a tax credit bond) to adjust the amount of interest income that the holder recognizes. See, e.g., section 171 (amortization of bond premium by a bond purchaser); § 1.61-7(c) (purchaser’s treatment of a bond purchased between interest payment dates); § 1.61-7(d) (seller’s treatment of a bond sold between interest payment dates); section 1272 (accrual of original issue discount (OID) by a holder); and Section 3.03 of this notice and section 1286 (treatment of stripping transactions).

(4) *Examples.* The following examples illustrate the application of this Section 3.02(a):

Example 1. Assume that, on December 15, 2011, City X issues a qualified tax credit bond with a stated principal amount of \$12,000, a credit rate of 10% compounded quarterly, and a maturity date of December 15, 2013. B purchases the bond at original issue for \$12,000 and thus has a \$12,000 basis in the bond. B is a calendar year taxpayer that uses the cash receipts and disbursements method of accounting. Under Section 3.02(a) of this notice and § 1.1273-1(c), the allowance of the \$300 tax credit on each credit allowance date is treated as a payment of qualified stated interest of \$300 on those dates. On March 16, 2012, B sells the bond for \$12,000. On March 15, 2012, the first credit allowance date occurring after the issuance of the bond, B becomes entitled to a \$300 tax credit and, with respect to that credit, must include in income \$300 of interest in 2012. No interest is includable in 2011.

Example 2. The facts are the same as in *Example 1*, except that B uses an accrual method of accounting. As in *Example 1*, B becomes entitled to a \$300 tax credit on March 15, 2012. B, however, must include in income \$50 of interest in 2011 and \$250 of interest in 2012 (based on a 30 day/360 day counting convention).

Example 3—(i) The facts are the same as in *Example 1*, except that on March 16, 2012, B sells the bond for \$12,100 to C, a taxpayer that uses the cash receipts and disbursements method and the calendar year. C has not previously elected to amortize bond premium under section 171. Under § 1.61-7(d), B treats the entire \$12,100 as sales proceeds. Because

B’s basis in the bond was \$12,000, B has a \$100 gain on the sale. C has a \$12,100 basis in the bond. Because C acquired the bond with premium of \$100, C may elect to amortize the \$100 bond premium under section 171.

(ii) Assume further that C holds the bond until its retirement on December 15, 2013. C has \$900 of tax credits in 2012 and \$1,200 in 2013. If C does not elect to amortize the bond premium, C has \$900 of interest income in taxable year 2012 and \$1,200 of interest income in taxable year 2013. In addition, C has a \$100 loss in taxable year 2013. If C elects to amortize the \$100 of bond premium, the amortized portion of that bond premium reduces C’s interest income in 2012 and 2013, and C does not have a \$100 loss in taxable year 2013.

Example 4. The facts are the same as in *Example 3*, except that B sells the bond to C on January 15, 2012, at a sales price of \$12,100. (Based on the treatment of the credits under section 3.02(a)(2) of this notice, there was \$100 of accrued but unpaid interest with respect to the bond on the sale date.) Under § 1.61-7(d), B treats \$100 of the sales price as the receipt of interest accrued on the bond, includes this amount in income in 2012, and treats the remaining \$12,000 as sales proceeds. Because B’s basis in the bond is \$12,000, B has no gain or loss on the sale of the bond. On March 15, 2012, C becomes entitled to the \$300 credit. Under § 1.61-7(c), the amount of interest income included by C with respect to the credit is \$200, and C’s basis in the bond is \$12,000.

(b) *Limitation based on amount of tax*—(1) *In general.* The credit allowed under section 54A(a) and this Section 3.02 is subject to the limitation in section 54A(c)(1) based on the taxpayer’s income tax liability.

(2) *Carryover of unused credit*—(i) *In general.* Under section 54A(c)(2), if the credit allowable for the taxable year under section 54A(a) exceeds the limitation imposed for the taxable year by section 54A(c)(1), the excess credit (an excess credit) is carried to the succeeding taxable year and added to the credit allowable under section 54A(a) (as adjusted by sections 54C(b) and 54D(b)) for the succeeding taxable year (determined before the application of the limitation for the succeeding taxable year under section 54A(c)(1)).

(ii) *No time limit on carryovers of excess credits.* An excess credit under section 54A(c)(2) can be carried forward to succeeding taxable years and used in a succeeding year to the extent that the excess credit does not exceed the limitation for that taxable year. Any allowed credit, including any excess credit from a prior year, however, must be taken for the first taxable year in which, and to the extent that, the allowed credit, including the excess credit, does not exceed the limitation under sec-

tion 54A(c)(1) and Section 3.02(b)(2)(i) of this notice.

(c) *Qualified tax credit bonds and corporate earnings and profits*—(1) *Adjustments to earnings and profits*. A corporation generally adjusts its earnings and profits in accordance with its method of accounting. See § 1.312–6. For this purpose, a corporation increases its earnings and profits for interest income (including interest described in section 54A(f)). A corporation reduces its earnings and profits when, and to the extent that, it would have reduced its earnings and profits had it satisfied its tax liability with cash rather than reducing that liability with tax credits from qualified tax credit bonds.

(2) *RICs and REITs*. If, under section 853A or section 54A(h), a regulated investment company or a real estate investment trust, respectively, distributes with respect to its stock a tax credit from a qualified tax credit bond or from a stripped credit coupon from a qualified tax credit bond (including a credit passed through from a partnership or trust), then the earnings and profits of the regulated investment company or real estate investment trust are reduced when, and to the extent that, the earnings and profits would have been reduced if the distribution had consisted of cash in the amount of the credit.

3.03 QUALIFIED TAX CREDIT BONDS—TREATMENT OF STRIPPING TRANSACTIONS

(a) *Overview*. This Section 3.03 addresses stripping transactions involving qualified tax credit bonds. Section 54A(i)(1) provides generally that, under regulations, there may be a separation, including at issuance, of the ownership of a qualified tax credit bond and the entitlement to a credit under section 54A with respect to the bond. In the case of any such separation, the credit is allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond. Section 54A(i)(2) further provides that, in the case of such a separation, the rules of section 1286 are to apply to the qualified tax credit bond as if it were a stripped bond and to the credit as if it were a stripped coupon.

(b) *Definitions*. The following definitions apply for purposes of this Section 3:

(1) *Credit coupon* means the right to receive a tax credit under section 54A with respect to a qualified tax credit bond on a credit allowance date.

(2) *Issue* means issue as defined in § 1.150–1(c) except that, in applying that definition for purposes of this Section 3.03, the only bonds taken into account are qualified tax credit bonds as defined in section 54A(d)(1).

(3) *Stripping transaction* means a transaction that results in the separation in ownership between any credit coupon with respect to a qualified tax credit bond for any credit allowance date that has not yet occurred and any right to receive cash (whether stated principal or stated interest) that has not yet become payable. Notwithstanding the preceding sentence, the term stripping transaction does not include a transaction with respect to a particular bond in which the post-transaction future rights (that is, rights to cash that is not yet payable and credits whose credit allowance dates have not yet occurred) reflect a *pro rata* division of all the pre-transaction future rights.

(4) *Stripped credit coupon* means a credit coupon with respect to a qualified tax credit bond if the bond has undergone a stripping transaction.

(c) *Strippable Issue*. For purposes of this notice, the term “strippable issue” means an issue of qualified tax credit bonds that complies with all of the following requirements:

(1) *Designation requirement*. The issuer on or before the date of issue includes a statement in the bond documents (as defined in § 1.150–1(b)) that the issue of qualified tax credit bonds is strippable. For an issue of qualified tax credit bonds that is issued before March 31, 2010, this designation may be effected on or before May 17, 2010.

(2) *Identification requirement*. On an information return filed with the IRS under section 54A(d)(3), the issuer identifies the issue of qualified tax credit bonds as a strippable issue. Except as provided in the next sentence, the identification must be on the first information return filed under section 54A(d)(3) with respect to the issue of qualified tax credit bonds. For an issue of qualified tax credit bonds that is issued before March 31, 2010, the identification may instead be on an amended information return filed before May 17, 2010.

(3) *Registration requirement*. The issue of qualified tax credit bonds is issued in registered form. For this purpose, registered form means that all rights to stated principal, stated cash interest, and tax credits under the bond may be transferred only through book entry on the registration books of the issuer or an agent or nominee (or chain of nominees) for this purpose. In addition, a bond is not considered to be in registered form unless book entries are maintained (by the issuer, an agent, or nominee) in a manner that makes all the entries available for inspection upon request by the Commissioner or his designees.

(4) *CUSIP number requirement*. A CUSIP number is assigned to the issue of qualified tax credit bonds, a separate CUSIP number is assigned to all rights to receive tax credits on each credit allowance date with respect to the issue, and at least one separate CUSIP number is assigned to all rights to receive cash (whether stated principal or stated interest) with respect to the issue.

(d) *Allowance of the tax credit to a holder of a stripped credit coupon*. A taxpayer who holds a stripped credit coupon on a credit allowance date is allowed the tax credit only if all of the following requirements are satisfied:

(1) *Strippable issue*. The bond is part of a strippable issue within the meaning of paragraph (c) of this Section 3.03.

(2) *Stripped credit coupons*. The stripped credit coupon is either a whole credit coupon or a proportional share of a whole credit coupon. Thus, if a person holds any other division of a whole credit coupon, including any direct or indirect division or modification of a whole credit coupon effected through a partnership, trust, or other investment arrangement that, in substance, causes the person to hold a variable share of the whole credit coupon, then no tax credit is allowed with respect to that interest in the credit coupon. For example, if a person holds an interest in a partnership or a share of a trust that effects any division of a whole credit coupon held by the partnership or trust other than a proportional division, then that person (and any other person to whom the person directly or indirectly passes the credit) is not entitled to a tax credit with respect to the person’s allocable share or beneficial

interest in that division of the whole credit coupon.

(3) *Broker accounts.* The taxpayer holds the stripped credit coupon in an account with—

(i) A broker as defined in section 6045(c)(1); or

(ii) Any other person to the extent provided by the Commissioner in published guidance.

(e) *Treatment of a stripping transaction involving a qualified tax credit bond—(1) In general.* Except to the extent that a provision of this Section 3.03 explicitly provides otherwise, subsections (a), (b), and (e) of section 1286 apply to stripping transactions involving qualified tax credit bonds. In applying these provisions of section 1286, the allowance of a credit is treated in the same manner as a cash payment of stated interest on the credit allowance date. See Section 3.02(a)(2) of this notice.

(2) *Aggregation and other rules.* If, on a single date, a taxpayer purchases (including a purchase under section 1286(b)(4)), as part of a single transaction or series of related transactions, more than one component (stated principal, stated cash interest, or credit coupons) of a qualified tax credit bond that has been subject to a stripping transaction, then, for purposes of sections 1271 through 1286 and the regulations thereunder, the taxpayer must treat the components so purchased as a single debt instrument (the aggregated debt instrument) that was newly issued on the purchase date. Notwithstanding the prior sentence, none of the payments on the aggregated debt instrument is treated as qualified stated interest under § 1.1273-1(c). If, in a manner described in the first sentence of this Section 3.03(e)(2), the taxpayer purchases all of the then-outstanding components of a qualified tax credit bond, then the resulting aggregated debt instrument is treated as of the purchase date as if it had not been subject to a previous stripping transaction, and thus the second sentence of this Section 3.03(e)(2) does not apply.

(f) *Examples.* The rules in this Section 3.03 are illustrated by the following examples.

Example 1—(i) Facts. On December 15, 2011, City X issues an issue of qualified school construction bonds as a single bond with a stated principal amount

of \$12,000, a credit rate of 10% compounded quarterly, and a maturity date of December 15, 2013. Assume that none of the interest on the bond is payable in cash. (That is, there is no supplemental cash interest coupon.) X, on or before the date of issue, includes in the bond documents a statement that the issue is stripable and issues the issue in registered form. X obtains 10 CUSIP numbers with respect to the issue (1 CUSIP number for the \$12,000 issue of qualified school construction bonds, a separate CUSIP for the credit coupons for each of the 8 credit allowance dates through the scheduled maturity of the issue, and 1 CUSIP number for the scheduled principal payment at maturity). On the first information return that X files with the IRS with respect to this issue under section 54A(d)(3), X indicates that the issue is a stripable issue of qualified school construction bonds.

(ii) *Analysis.* X's issue of qualified school construction bonds is a stripable issue because it satisfies the requirements of Section 3.03(c)(1) through (4) of this notice.

Example 2. The facts are the same as in *Example 1*, except that, on December 15, 2011, X sells the \$12,000 bond to Y. Y sells on December 15, 2011, a \$6,000 *pro rata* portion of the bond to A, a cash method, calendar year taxpayer, and a \$6,000 *pro rata* portion of the bond to B, an accrual method, calendar year taxpayer. (Thus, Y's sales to A and B do not constitute a stripping transaction, because they effect a *pro rata* division of the future rights under the bond.) The purchase prices paid by A and B were \$6,000 each. On March 15, 2012 (and all subsequent credit allowance dates), subject to the limitations contained in section 54A(c)(1) and Section 3.02(b)(1) of this notice, A and B are each entitled to claim a \$150 tax credit.

Example 3—(i) Facts. The facts are the same as in *Example 2*, except that, on December 15, 2011, A sells the December 15, 2013, credit coupon of \$150 to C, a cash method calendar year taxpayer for \$123.75 (its fair market value). After the sale, A holds the right to receive \$6,000 at maturity as well as the first 7 credit coupons (the "8 retained components"), and C holds only the December 15, 2013, credit coupon.

(ii) *Application of definitions.* The sale is a stripping transaction within the meaning of Section 3.03(b)(3) of this notice. The credit coupon held by C and the 7 credit coupons retained by A are all stripped credit coupons. The treatment of B's bond is not affected by the sale.

(iii) *A's treatment of the sale.* Under Section 3.03(e)(1) of this notice, section 1286(b) applies to this stripping transaction. Section 1286(b)(4) treats A as having purchased the 8 retained components on the date on which A sells the December 15, 2013, credit coupon to C. Under Section 3.03(e)(2) of this notice, the 8 retained components must be treated as an aggregated debt instrument that is newly issued on the date of the sale of that credit coupon.

Prior to the sale of the credit coupon, A's basis in the unstripped \$6,000 bond is A's purchase price of \$6,000. Because no interest is treated as having accrued on the bond prior to the sale, A is not required to include an amount in income under section 1286(b)(1)(A), and thus no amount needs to be added to A's basis under section 1286(b)(2). Pursuant to section 1286(b)(3), A must allocate its basis in the

bond (\$6,000) between the credit coupon that A sold and A's aggregated debt instrument, based on their respective fair market values. Assume that, on the date of the sale, the fair market value of A's aggregated debt instrument is \$5,877.10 and the fair market value of the December 15, 2013, credit coupon sold by A is \$123.75 (total fair market value of \$6,000.85). Based on these fair market values, A's basis in the aggregated debt instrument is \$5,876.27 (\$6,000 basis x [\$5,877.10 / \$6,000.85]) and A's basis in the December 15, 2013, credit coupon is \$123.73 (\$6,000 basis x [\$123.75 / \$6,000.85]). As a result, A realizes a gain of \$0.02 on the sale of the December 15, 2013, credit coupon (amount realized of \$123.75, minus basis of \$123.73).

(iv) *A's treatment of the aggregated debt instrument.* Under section 1286(b)(4), A is treated as purchasing the aggregated debt instrument for \$5,876.27. The purchase is treated as taking place on the date of the sale to C, and the purchase price is equal to the portion (\$5,876.27) of A's \$6,000 basis that is allocated to the aggregated debt instrument. Under Section 3.03(e)(2) of this notice, A must treat the aggregated debt instrument as newly issued on that date for \$5,876.27. Thus, the aggregated debt instrument has an issue price of \$5,876.27. Under Section 3.03(e)(2) of this notice, no payment on the aggregated debt instrument is qualified stated interest under § 1.1273-1(c). As a result, the stated redemption price at maturity of the aggregated debt instrument is \$7,050 (\$6,000 + [7 x \$150]). The aggregated debt instrument, therefore, has OID of \$1,173.73 (\$7,050 - \$5,876.27). Although A generally uses the cash receipts and disbursements method of accounting, A must include the OID in income as it accrues on a constant yield basis over the term of the aggregated debt instrument in accordance with section 1272 and the regulations thereunder.

(v) *C's treatment of the stripped tax credit coupon.* Under Section 3.03(e)(1) of this notice, section 1286(a) applies to C's purchase of the December 15, 2013, stripped credit coupon. Section 1286(a) requires C to treat the purchase of this stripped credit coupon as the purchase of a zero coupon bond that is issued on the date of purchase (December 15, 2011). The stripped credit coupon has a stated redemption price at maturity of \$150 and an issue price of \$123.75, resulting in OID of \$26.25 (\$150 - \$123.75). The term of the stripped credit coupon begins on December 15, 2011, and ends on December 15, 2013. Although C generally uses the cash receipts and disbursements method of accounting, C must include the OID in income as it accrues on a constant yield basis over that term in accordance with section 1272 and the regulations thereunder.

C's basis in the stripped credit coupon is increased by the amount of OID that is included in C's income. As a result, C's basis in the stripped credit coupon on the December 15, 2013, credit allowance date will be \$150. On that date, C will become entitled to the \$150 of credit. Thus, C does not have any gain or loss when the coupon matures and C becomes entitled to the \$150 tax credit.

SECTION 4. INFORMATION REPORTING REQUIREMENTS RELATED TO TAX CREDIT BONDS

.01 IN GENERAL

Qualified tax credit bonds—in particular, stripping transactions involving these bonds—raise significant tax compliance and tax administration issues. The Treasury Department and the IRS plan to implement and maintain a robust system of information reporting in this area to facilitate tax compliance and strengthen tax administration.

Section 54A(d)(3) requires issuers of qualified tax credit bonds to submit information reports regarding the bonds similar to the reports required under section 149(e).

Section 6049(d)(9)(A) provides that, for purposes of the information reporting requirements under section 6049(a) regarding payments of interest, the term interest includes amounts includible in gross income under section 54A, and those amounts are treated as paid on the credit allowance date.

Under section 6049(d)(6), section 6049(a) generally requires OID on any obligation to be reported as if it were paid at the time that the OID is includible in income under section 1272. This provision governs section 6049 information reporting when a tax credit under a qualified tax credit bond is included in an instrument's stated redemption price at maturity, and thus contributes to OID. (This occurs when the allowance of the credit is not treated as a payment of qualified stated interest on an instrument, for example, when a stripped credit coupon is part of an aggregated debt instrument that is subject to the second sentence of Section 3.03(e)(2) of this notice.)

Section 6049(b)(2)(B)(i) and section 6049(b)(4) generally exempt from information reporting interest that is paid to certain persons. Section 6049(d)(9)(B), however, generally makes this exemption inapplicable for interest on qualified tax credit bonds that is treated as paid to the following entities: (i) corporations; (ii) dealers in securities or commodities required to register under the laws of the United States, any State, the District of Columbia or any United States possession; (iii) real estate investment trusts

(as defined in section 856); (iv) entities registered at all times during the taxable year under the Investment Company Act of 1940; (v) common trust funds (as defined in section 584(a); and (vi) trusts exempt from tax under section 664(c). Notwithstanding the preceding sentence, the exemption continues to apply to interest that is covered by an express regulatory exception.

Section 6049(d)(9)(C) provides broad authority to the Treasury Department to issue regulations as necessary or appropriate to carry out the purposes of section 6049(d)(9), including regulations that require more frequent or more detailed reporting.

The Treasury Department and the IRS will attempt to ensure that both the IRS and investors receive accurate information about interest income (including OID) that is includable in income as a result of holding qualified tax credit bonds and components stripped from these bonds. The Treasury Department and the IRS will also seek to ensure that tax credits from qualified tax credit bonds (including tax credits from stripped credit coupons) are claimed only when the claimant is entitled to those credits.

To these ends, the Treasury Department and the IRS anticipate implementing the integrated system of information reporting that is described below in this Section 4. This may involve implementing new requirements. Revised forms and, if necessary, regulations will be issued to implement these information reporting requirements. For example, when a taxpayer holds a stripped credit coupon in an account with a broker as defined in section 6045(c)(1) (see Section 3.03(d)(3) of this notice), future guidance is expected to require the broker to compute, and report to the holder of the stripped credit coupon and to the IRS, the OID that accrues on that coupon under Section 3.03(e) of this notice and section 1286(a)-(b).

This system of information reporting will be subject to the same penalties that apply generally with respect to the failure to accurately file required forms. These include but are not limited to the penalties under sections 6049, 6721, and 6722 (which are applied to issuers, issuers' agents, and independent intermediaries) and the penalty under section 6694 and

Rev. Proc. 2009-11, 2009-3 I.R.B. 313 (which is applied to paid preparers).

As the forms and instructions to be used to implement the integrated information reporting system become available for use or for review in draft form, the IRS plans to publish them on its web site at <http://www.irs.gov/app/picklist/list/formsInstructions.html> and <http://www.irs.gov/app/picklist/list/draft-TaxForms.html>, respectively. Taxpayers wishing to provide comments to the IRS on draft tax forms can do so on the IRS web site at <http://www.irs.gov/formspubs/page/0,,id=10179,00.html>.

.02 INFORMATION RETURNS UNDER SECTION 54A(d)(3)

Section 54A(d)(3) requires issuers of qualified tax credit bonds to file information returns. Although Form 8038 is now used for this purpose, the IRS intends to publish a new form (Form 8038-TC) to be used in this situation. As is provided by Section 3.03(c)(2) of this notice, the issuer of a strippable issue is now required, as part of this reporting obligation, to identify the issue as a strippable issue and to provide all of the CUSIP numbers that Section 3.03(c)(4) of this notice requires. Issuers must provide this information on Form 8038 or an attachment thereto until the new Form 8038-TC becomes available and thereafter on this new form.

.03 REPORT OF A TAXPAYER CLAIMING A TAX CREDIT ON AN INCOME TAX RETURN

If a taxpayer claims on its income tax return a tax credit authorized by section 54A, the taxpayer is required to include Form 8912 as part of the return. The IRS and Treasury Department anticipate that the information required on this form will be modified to include not only the type of tax credit bond and the amount of credit claimed but also the tax identification number of the issuer of the bond and the CUSIP number for the qualified tax credit bond (or the stripped credit coupon) that is the basis of the credit being claimed.

.04 TAX CREDIT ALLOWANCE INFORMATION RETURN

Under section 6049, the IRS expects to publish a new form, Form 1097-BTC, to

inform both the IRS and any recipient of a credit under section 54A of the amount of the tax credit that the credit recipient has received for each credit allowance date. The amount to be reported is the amount of the allowed credit to which the recipient is entitled within the meaning of Section 3.02(a)(1). It is anticipated that this form will be used in two distinct situations. First, it will have to be filed by, or on behalf of, the issuer. Second, a filing will also be required of each broker or intermediary that is not acting on behalf of the issuer (an independent intermediary).

As for the issuer requirement, the principles under section 6049(d)(4) are expected to apply to limit this requirement to the last responsible person or intermediary acting on behalf of the issuer.

The requirement for independent intermediaries is expected to apply whenever such an intermediary serves as an agent or nominee with respect to a credit or the intermediary receives a credit and passes it on either to another independent intermediary or to the taxpayer that will ultimately claim the credit. (Examples of independent intermediaries include a broker that is not reporting on behalf of the issuer, a partnership, a trust, an estate, and a regulated investment company or real estate investment trust that distributes tax credits with respect to its stock under section 853A or section 54A(h)).

It is anticipated that this form will operate in the following fashion—

- The information required by the form will include not only the amount of the credit transferred to the recipient but also the bond issuer's tax identification number and the CUSIP number for the qualified tax credit bond (or stripped credit coupon) that is the basis for the credit being transmitted.
- Effective starting with credits received in 2010, responsible persons under section 6049 will be required to submit a form to the IRS annually after the close of the calendar year. The form will include the total amount of tax credits for which the responsible persons served as a responsible person during the taxable year with respect to each independent intermediary and each holder of a tax credit bond or stripped credit coupon. The form will

require the CUSIP number of the bond (or the stripped credit coupon) generating that tax credit and the tax identification number of the issuer of the bond that underlies the tax credit.

- Effective starting with credits received in 2011, responsible persons under section 6049 will be required to send this form to the credit recipient quarterly within 30 to 60 days following the credit allowance date to which the tax credit relates.
- The form will require that the entity generating the form indicate whether the entity is the bond issuer (including a person acting on behalf of the bond issuer) or whether it is an independent intermediary and thus is not only the generator of a form but also the recipient of such a form from another independent intermediary or from the bond issuer (including a person acting on behalf of the bond issuer).

.05 REPORT FOR INCOME FROM INTEREST, ORIGINAL ISSUE DISCOUNT, OR DIVIDENDS

(a) For qualified tax credit bonds, information reporting for interest and OID under section 6049 will be expanded. Responsible persons under section 6049 will generally be required annually to provide the IRS and the holder of a qualified tax credit bond or stripped credit coupon with an information return indicating the amount of interest income paid (or treated as paid for purposes of section 6049) to the holder during that annual period with respect to any qualified tax credit bond. As stated above, when a taxpayer holds a stripped credit coupon in an account with a broker as defined in section 6045(c)(1) (see Section 3.03(d)(3) of this notice), future guidance is expected to require the broker to compute, and report, the OID on that coupon that accrues under Section 3.03(e) of this notice and section 1286(a)-(b). An analogous requirement may apply to any other stripped component from a qualified tax credit bond.

(b) It is expected that if a regulated investment company or a real estate investment trust receives tax credits allowed by section 54A (either because it holds a qualified tax credit bond or stripped coupon or because it received the credits from an

independent intermediary) and distributes with respect to its stock some or all of those credits, then when that entity reports under section 6042 dividends paid to its shareholders, the entity must include distributed tax credits that are treated as dividends.

SECTION 5. REQUEST FOR COMMENTS

The Treasury Department and the IRS solicit comments generally on the expected regulations that are described in Section 3 of this notice, other aspects of stripping transactions under section 1286 on which guidance is needed, and the various anticipated information reporting requirements that are described in Section 4 of this notice.

In particular, the Treasury Department and the IRS solicit comments regarding—

- Systems challenges, time needed to implement systems changes to enable affected parties to comply with the anticipated information reporting requirements, and alternative approaches to alleviate systems challenges consistent with the overall objectives for information reporting in this area;
- The application of the principles in this notice to tax credit Build America Bonds under section 54AA and any additional rules that may be necessary to accommodate that application; and
- Whether any particular guidance is needed to limit potential duplicative claims of entitlement to tax credits (e.g., specifying that credits are allowable only to record holders as of a particular time in a particular time zone on a credit allowance date).

Comments should be submitted in writing and can be e-mailed to notice.comments@irs.counsel.treas.gov (include "Notice 2010-28" in the subject line) or mailed to Office of Associate Chief Counsel (Financial Institutions and Products), Re: Notice 2010-28, CC:FIP:B5, Room 3547, 1111 Constitution Avenue, NW, Washington DC 20224. The due date for the public comments is May 24, 2010. Comments that are submitted will be made available to the public.

SECTION 6. OMB NUMBER UNDER THE PAPERWORK REDUCTION ACT

The information collection contained in this notice has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35) under control number 1545-2167. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

The collection of information in this notice is in Section 3.03(c). The information is required in order to inform the IRS and holders of qualified tax credit bonds whether the credit coupons relating to those bonds may be stripped. The collections of information are required for the issuer to enjoy the benefit of having these bonds treated as part of a strippable issue. The likely respondents are states or local governments and certain other eligible issuers of qualified tax credit bonds.

We estimate the total number of respondents to be 1,000 and the total annual responses to be 1,000. We estimate it will take 1 hour to comply. Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

SECTION 7. EFFECTIVE DATE

.01 The effective date of this notice is March 23, 2010.

.02 The interim guidance in Sections 3.02 and 3.03 of this notice applies to—

(1) Stripping transactions (as defined in Section 3.03(b)(3) of this notice) that occur on or after the effective date of this notice; and

(2) Taxable years ending on or after the effective date of this notice for holders of qualified tax credit bonds and of cash or credit coupons stripped from qualified tax credit bonds.

.03 Taxpayers may choose to apply the interim guidance in Section 3.02 of this notice consistently to taxable years ending before the effective date of this notice.

.04 The IRS and the Treasury Department anticipate that the date of applicability of the expected regulations described in this notice will be March 23, 2010. If, and to the extent, the expected regulations differ from the interim guidance in this notice, the different provisions of the final regulations will be applied without adverse retroactive effect.

SECTION 8. DRAFTING INFORMATION

The principal authors of this notice are Aviva Roth and Timothy Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Timothy Jones at (202) 622-3980 (not a toll-free call). For questions on earnings and profits, contact Russell P. Subin at (202) 622-7790 (not a toll-free call).

Life Insurance Reserves — Actuarial Guideline XLIII Notice 2010-29

SECTION 1. PURPOSE

This notice provides interim guidance to issuers of variable annuity contracts on issues that arise under §§ 807 and 816 of the Internal Revenue Code (Code) as a result of the adoption by the National Association of Insurance Commissioners (NAIC) of Actuarial Guideline XLIII, Commissioners' Annuity Reserve Valuation Methodology (CARVM) for Variable Annuities (AG 43).

SECTION 2. BACKGROUND

Overview

.01 A life insurance company is required to account for its obligations to policyholders using reserve methods of accounting. Statutory Accounting Principles (SAP) govern the preparation of the company's annual statement, which is filed with the relevant state insurance regulators. Generally Accepted Accounting Principles (GAAP) govern the preparation

of an insurer's financial statements, which are provided to shareholders, bondholders, banks and rating agencies. GAAP differs in some respects from SAP.

.02 Clear reflection of the income of a life insurance company for federal income tax purposes requires an appropriate measurement of the company's life insurance reserves. Tax accounting rules used to compute the taxable income of a life insurance company differ in some respects from SAP or GAAP, including with respect to the computation of life insurance reserves.

.03 Although all insurance companies are required by the respective states in which they do business to maintain reserves, not all reserves that a company maintains (or is required to maintain) qualify as "life insurance reserves" for Federal income tax purposes.

Use and Computation of Life Insurance Reserves

.04 Under § 816(a), an insurance company is a life insurance company if the sum of (1) its life insurance reserves, plus (2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves, comprise more than 50 percent of its total reserves.

.05 Section 816(c) defines "total reserves" as the sum of (1) life insurance reserves, (2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and (3) all other insurance reserves required by law.

.06 Section 816(b) defines "life insurance reserves" as amounts that are (1) computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and (2) set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies. Reserves generally must be required by law to qualify as life insurance reserves. *See also* § 1.801-4(d) and (e) (setting forth reserves that qualify,

and reserves that do not qualify, as life insurance reserves for Federal income tax purposes under the predecessor of § 816); Rev. Rul. 67-435, 1967-2 C.B. 232 (concluding that a reserve maintained for abnormal mortality or depreciation and losses on assets owned by the company is not a life insurance reserve).

.07 A life insurance company must pay tax on its “life insurance company taxable income,” which is defined in § 801(b) as life insurance gross income less life insurance deductions. Life insurance gross income is defined in § 803(a) to mean the sum of (i) premiums, (ii) net decreases in certain reserves under § 807(a), and (iii) other amounts generally included by a taxpayer in gross income. Life insurance deductions are defined in § 804 to mean the general deductions provided under § 805 and the small life insurance deduction (if any) determined under § 806. Section 805(a)(2) authorizes a deduction for the net increase in certain reserves under § 807(b). The reserves taken into account under § 807(a) and (b) include life insurance reserves (as defined in § 816(b)). See § 807(c)(1).

.08 Section 807(d) through (f) sets forth rules to compute the amount of the life insurance reserve for a contract for purposes of determining taxable income. Section 807(d)(1) provides that the amount of the life insurance reserve for any contract is the greater of the net surrender value of the contract (determined under § 807(e)(1)) or the federally prescribed reserve determined under § 807(d)(2). This amount cannot, however, exceed the amount that would be taken into account with respect to the contract in determining “statutory reserves” (as defined in § 807(d)(6)).

.09 Section 807(e)(1) provides that the net surrender value of any contract is determined with regard to any penalty or charge that would be imposed on surrender but without regard to any market value adjustment on surrender (except for certain modified guaranteed contracts defined in § 817A(d)).

.10 Section 807(d)(2) provides that the federally prescribed reserve for a contract is computed using (a) the “tax reserve

method” applicable to the contract, (b) the greater of the applicable Federal interest rate (“AFIR”) or the prevailing State assumed interest rate (“PSAIR”), and (c) the prevailing commissioners’ standard tables for mortality and morbidity, adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

.11 In the case of a contract to which the Commissioners’ Annuities Reserve Valuation Method (“CARVM”) applies (generally, an annuity contract), § 807(d)(3)(A)(ii) and 807(d)(3)(B)(ii) provides that the tax reserve method applicable to the contract is the CARVM as prescribed by the NAIC which is in effect on the date the contract is issued. Other parameters, such as the appropriate interest rate and mortality tables, are likewise generally determined with reference to the date the contract is issued.

.12 Section 807(d)(6) provides that the term “statutory reserves” means the aggregate amount set forth in the annual statement with respect to items described in § 807(c). See also Rev. Rul. 2008-37, 2008-28 I.R.B. 77 (statutory reserves under § 807(d)(6) equal the highest aggregate reserve amount for § 807(c) items actually held and set forth on the annual statement pursuant to the minimum reserve requirements of any state in which a taxpayer does business). The term does not, however, include any reserve attributable to a deferred and uncollected premium if the establishment of such a reserve is not permitted under § 811(c).

.13 Section 807(f) provides that if the basis for determining any item referred to in § 807(c) (for example, life insurance reserves taken into account under § 807(c)(1)) as of the close of any taxable year differs from the basis for that determination as of the close of the preceding taxable year, then so much of the difference between the amount of the item at the close of the taxable year computed on the new basis, and the amount of the item at the close of the taxable year computed on the old basis, as is attributable to contracts issued before the taxable year is taken into

account ratably for each of the succeeding ten taxable years.

.14 Notice 2008-18, 2008-5 I.R.B. 363, was published on February 4, 2008, and described two reserve methodology projects that were then in development by the NAIC: One would provide a principles-based approach for calculating statutory reserves for life insurance contracts (Proposed Life PBR); the other, which was subsequently adopted as AG 43, would set forth a new Actuarial Guideline that would constitute CARVM for variable annuities (Proposed AG VACARVM). Notice 2008-18 alerted life insurance companies to federal income tax issues that could arise as a result of the adoption of either project and requested comments on those issues. Several organizations submitted comments in response to the notice.

Adoption of AG 43

.15 The NAIC adopted Proposed AG VACARVM as AG 43 with regard to contracts issued on or after January 1, 1981, effective December 31, 2009. Section V of AG 43 provides, however, that where the application of AG 43 produces higher reserves than a company had otherwise established by its previously used interpretation, the company may request a grade-in period, not to exceed three years, from the domiciliary insurance commissioner upon satisfactory demonstration of the previous interpretation, and that such a delay of implementation will not cause a hazardous financial condition or potential harm to policyholders.

.16 The purpose of AG 43 is to interpret the standards for the valuation of reserves for variable annuity and other contracts involving certain guaranteed benefits similar to those offered with variable annuities. Generally, AG 43 requires that the aggregate reserve for contracts falling within its scope equal the Conditional Tail Expectation Amount (the “CTE Amount”)¹ but not be less than the Standard Scenario Amount.²

¹ The CTE Amount is determined based on a projection of contracts falling within the scope of AG 43, and the assets supporting these contracts, over a broad range of stochastically generated projection scenarios and using prudent estimate assumptions. Although the CTE Amount is determined on an aggregate basis for the contracts falling within the scope of AG 43, Appendix 6 of the Guideline provides a method for allocating the aggregate reserve to individual contracts based on each contract’s cash surrender value or Standard Scenario Amount, as applicable.

² The Standard Scenario Amount is the aggregate of the reserves determined by applying the standard scenario method (as outlined in Appendix 3 of AG 43) to each of the contracts falling within the scope of AG 43.

.17 Based on the requirements of §§ 807 and 816, the terms of AG 43, and the data that are available to date, the Treasury Department and the Internal Revenue Service (IRS) have reached interim conclusions as to some of the issues identified in Notice 2008-18 and are continuing to consider others. Accordingly, section 3 of this notice provides interim guidance to taxpayers on some of the issues that arise under AG 43.

SECTION 3. INTERIM GUIDANCE

.01 *Reserve Ratio Test.* For purposes of determining under § 816(a) whether an insurance company satisfies the 50 percent of reserves test for qualification as a life insurance company for taxable years ending on or after December 31, 2009—

(a) the Standard Scenario Amount determined under AG 43 is included in life insurance reserves as defined in § 816(b) and total reserves as defined in § 816(c); and

(b) a taxpayer that delays implementation of AG 43 with permission of its domiciliary insurance commissioner under section V of AG 43 must consistently delay implementation for purposes of determining life insurance reserves and total reserves under § 816(b) and (c).

.02 *Statutory Reserve Cap.* For purposes of applying the statutory reserve cap of § 807(d)(1) for taxable years ending on or after December 31, 2009 —

(a) the term “statutory reserves” under § 807(d)(6) includes the Standard Scenario Amount determined under AG 43. Thus, a reserve will not be excluded from statutory reserves under § 807(d)(6) solely because the reserve represents the Standard Scenario Amount determined under AG 43, provided the requirements of § 807(d)(6) are otherwise met. For example, under § 807(d)(6) statutory reserves do not include any amount attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under § 811(c); and

(b) to the extent that a taxpayer delays implementation of AG 43 with permission of its domiciliary insurance commissioner under section V of AG 43, it must consistently delay implementation for purposes of determining the amount of statutory reserves under § 807(d)(6).

.03 *Federally-Prescribed Reserve.* For purposes of determining the amount of the reserve under § 807(d)(2) with respect to a contract falling within the scope of AG 43 and issued on or after December 31, 2009, the provisions for determining the Standard Scenario Amount are taken into account, and the provisions for determining the CTE Amount are not taken into account. Accordingly—

(a) for a contract issued before December 31, 2009, the tax reserve method under § 807(d)(2)(A) and (d)(3) is the method applicable to such contract when issued, as prescribed under relevant actuarial guidance in effect before the adoption of AG 43; and

(b) for a contract falling within the scope of AG 43 and issued on or after December 31, 2009, the tax reserve method with respect to such a contract under § 807(d)(2)(A) and (d)(3) is the method prescribed in AG 43 for determining the Standard Scenario Amount, applied using the appropriate valuation interest rate under § 807(d)(2)(B) and other adjustments to the method described below. *See, e.g.,* AG 43, Appendix 3;

(c) the PSAIR under § 807(d)(2)(B)(ii) and (d)(4)(B) with respect to such a contract is the highest assumed interest rate permitted to be used in computing the Standard Scenario Amount for annuity contracts falling within the scope of AG 43 under the insurance laws of at least 26 states, as of the beginning of the calendar year in which the contract was issued;

(d) the prevailing commissioners’ standard tables with respect to such a contract under § 807(d)(2)(C) and (d)(5) means the most recent commissioners’ standard tables prescribed by the NAIC that are permitted to be used in computing the Standard Scenario Amount for such a contract under AG 43 under the insurance laws of at least 26 states when the contract was issued; and

(e) whether a taxpayer delays implementation of AG 43 with permission of its domiciliary insurance commissioner under section V of that guideline has no effect on the determination of the amount of the reserve under § 807(d)(2).

.04 *Ten-year spread.* If the amount determined under § 807(d)(1) as of the last day of the first taxable year ending on or

after the date of a taxpayer’s implementation of AG 43 (generally, December 31, 2009) differs from the amount that would have been determined as of that date had AG 43 not been implemented—

(a) the difference between the amount determined with regard to AG 43 and the amount determined without regard to AG 43 (*i.e.*, under prior actuarial guidelines) must be spread over 10 taxable years, using the method prescribed by § 807(f)(1)(B); and

(b) to the extent that a taxpayer delays implementation of AG 43 with permission of its domiciliary insurance commissioner under section V of that guideline, it must consistently delay implementation of the ten-year spread under this section 3.04.

.05 *Standard Scenario Amount.* The Standard Scenario Amount determined under AG 43 will be treated as a life insurance reserve for Federal income tax purposes if the requirements of that guideline, including the account value return assumptions, are met.

.06 *Reliance on interim guidance.* Taxpayers may rely upon the interim guidance provided in this notice pending further published guidance by the Treasury Department and the IRS. If, and to the extent, future published guidance differs from the interim guidance in this notice, the different provisions of that future guidance will be applied without adverse retroactive effect.

.07 *No Inference on prior actuarial guidelines or Life PBR, or on other tax issues.* No inference should be drawn from this notice regarding any federal tax issues that arise under any actuarial guideline other than AG 43 or that could arise under Life PBR. In addition, this notice is not intended to address any other federal tax issues implicated in the adoption of AG 43 by the NAIC.

SECTION 4. EFFECTIVE DATE

This notice is effective March 25, 2010.

SECTION 5. PROCEDURAL INFORMATION

This notice serves as an “administrative pronouncement” as that term is used in § 1.6662-4(d)(3)(iii) of the regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

DRAFTING INFORMATION

The principal author of this notice is
Chris Lieu of the Office of the Associate

Chief Counsel (Financial Institutions &
Products). For further information regard-
ing this notice, contact Mr. Lieu at (202)
622-3970 (not a toll-free call).

Part IV. Items of General Interest

Issuance of Opinion and Advisory Letters and Opening of the EGTRRA Determination Letter Program for Pre-Approved Defined Benefit Plans

Announcement 2010-20

The Service will soon issue opinion and advisory letters for pre-approved (*i.e.*, master and prototype (M&P) and volume submitter (VS)) defined benefit plans that were restated for the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, (“EGTRRA”) and other changes in plan qualification requirements listed in Notice 2007-3, 2007-1 C.B. 255 (“the 2006 Cumulative List”) and that were filed with the Service. The Service expects to issue the letters on March 31, 2010, or, in some cases, as soon as possible thereafter. A plan that receives a favorable letter with respect to its restatement for EGTRRA and the 2006 Cumulative List is referred to as an “EGTRRA-approved plan.” Employers using these pre-approved plan documents to restate a plan for EGTRRA and the 2006 Cumulative List will be required to adopt the EGTRRA-approved plan document by April 30, 2012. The Service will accept applications for individual determination letters submitted by adopters of these pre-approved plans starting on May 1, 2010.

Background

Rev. Proc. 2005-16, 2005-1 C.B. 674, and Rev. Proc. 2007-44, 2007-2, C.B. 54, as modified by Rev. Proc. 2008-56, 2008-40 I.R.B. 826, describe a staggered remedial amendment system for plans that are qualified under § 401(a) of the Internal Revenue Code, with five-year amendment/approval cycles for individually designed plans and six-year cycles for pre-approved plans. These revenue procedures require sponsors and practitioners to restate their pre-approved defined benefit plans for EGTRRA and the 2006 Cumulative List and apply for new opinion or advisory letters.

Section 16.03 of Rev. Proc. 2007-44 provides that when the review of a cycle for pre-approved plans has neared completion, the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This date is intended to give adopting employers a window of approximately two years in which to adopt the plans.

Deadline for Employer Adoption of EGTRRA-approved Defined Benefit M&P and VS Plans

An adopting employer whose defined benefit plan is eligible for the six-year remedial amendment cycle under section 17 of Rev. Proc. 2007-44, as modified by Rev. Proc. 2008-56, and who adopts an

EGTRRA-approved M&P or VS defined benefit plan by April 30, 2012, will have adopted the plan within the employer’s six-year remedial amendment cycle. The end of the plan’s remedial amendment cycle with respect to EGTRRA and the changes in plan qualification requirements on the 2006 Cumulative List is April 30, 2012.

Opening of Individual Determination Letter Program for EGTRRA-approved Defined Benefit M&P and VS Plans

Adopting employers may apply for individual determination letters with respect to an EGTRRA-approved M&P or VS defined benefit plan beginning May 1, 2010. Additional information regarding determination letter applications for pre-approved plans, including the application forms and other documents that must be submitted with an application, may be found in section 9 of Rev. Proc. 2010-6, 2010-1 I.R.B. 193, and the frequently asked questions at: *Retirement Plans FAQs Regarding EGTRRA Determination Letter Program for Pre-Approved Plans*.

ANNOUNCEMENT AND REPORT CONCERNING ADVANCE PRICING AGREEMENTS

ANNOUNCEMENT 2010-21

March 29, 2010

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning Advance Pricing Agreements (APAs) and the APA Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2008. This eleventh report describes the experience, structure, and activities of the APA Program during calendar year 2009. It does not provide guidance regarding the application of the arm’s length standard.

Craig A. Sharon
Director, Advance Pricing Agreement Program

Background

Internal Revenue Code (IRC) § 482 provides that the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more commonly controlled businesses if necessary to reflect clearly the income of such businesses. Under the § 482 regulations, the standard to be applied in determining the true taxable income of a controlled business is that of a business dealing at arm's length with an unrelated business. The arm's length standard has also been adopted by the international community and is incorporated into the transfer pricing guidelines issued by the Organization for Economic Cooperation and Development (OECD). OECD, *TRANSFER PRICING GUIDELINES FOR MULTINATIONAL ENTERPRISES AND TAX ADMINISTRATORS* (1995). Transfer pricing issues by their nature are highly factual and have traditionally been one of the largest issues identified by the IRS in its audits of multinational corporations. The APA Program is designed to resolve actual or potential transfer pricing disputes in a principled, cooperative manner, as an alternative to the traditional examination process. An APA is a binding contract between the IRS and a taxpayer by which the IRS agrees not to seek a transfer pricing adjustment under IRC § 482 for a covered transaction if the taxpayer files its tax return for a covered year consistent with the agreed transfer pricing method (TPM). In 2009, the IRS and taxpayers executed 63 APAs and amended 8 APAs.

Since 1991, with the issuance of Rev. Proc. 91-22, 1991-1 C.B. 526, the IRS has offered taxpayers, through the APA Program, the opportunity to reach an agreement in advance of filing a tax return on the appropriate TPM to be applied to related party transactions. In 1996, the IRS issued internal procedures for processing APA requests. Chief Counsel Directives Manual (CCDM), ¶¶ 42.10.10 — 42.10.16 (November 15, 1996).¹ Also in 1996, the IRS updated Rev. Proc. 91-22 with the release of Rev. Proc. 96-53, 1996-2 C.B. 375.² In 1998, the IRS published Notice 98-65, 1998-2 C.B. 803,³ which set forth streamlined APA procedures for small business taxpayers. Then on July 1, 2004, the IRS updated and superseded both Rev. Proc. 96-53 and Notice 98-65 by issuing Rev. Proc. 2004-40, 2004-2 I.R.B. 50,⁴ effective for all APA requests filed on or after August 19, 2004.

On December 19, 2005, the IRS again updated the procedural rules for processing and administering APAs with the release of Rev. Proc. 2006-09, 2006-1 C.B. 278.⁵ Rev. Proc. 2006-09 supersedes Rev. Proc. 2004-40 and is effective for all APA requests filed on or after February 1, 2006. On May 21, 2008, the IRS released Rev. Proc. 2008-31, 2008-23 I.R.B. 1133, which revised Rev. Proc. 2006-09 to describe further the types of issues that may be resolved in the APA process.⁶ Specifically, Rev. Proc. 2008-31 added a new sentence to Section 2.01 of Rev. Proc. 2006-09, to advise that the APA process may be used to resolve any issue for which transfer pricing principles may be relevant, such as attribution of profit to a permanent establishment under certain U.S. income tax treaties, the amount of income effectively connected with the conduct of a U.S. trade or business, and the amount of income derived from sources partly within and partly without the United States.

Advance Pricing Agreements

An APA generally combines an agreement between a taxpayer and the IRS on an appropriate TPM for the transactions at issue (Covered Transactions) with an agreement between the U.S. and one or more foreign tax authorities (under the authority of the mutual agreement process of our income tax treaties) that the TPM is correct. With such a "bilateral" APA, the taxpayer ordinarily is assured that the income associated with the Covered Transactions will not be subject to double taxation by both the U.S. and the foreign jurisdiction. The policy of the United States, as reflected in §§ 2.08 and 7 of Rev. Proc. 2006-09, is to encourage taxpayers that enter the APA Program to seek bilateral or multilateral APAs when competent authority procedures are available with respect to the foreign country or countries involved. However, the IRS may execute an APA with a taxpayer without reaching a competent authority agreement (a unilateral APA).

A unilateral APA is an agreement between a taxpayer and the IRS establishing an approved TPM for U.S. tax purposes. A unilateral APA binds the taxpayer and the IRS, but does not prevent a foreign tax administration from taking a different position on the appropriate TPM for a transaction. As stated in § 7.07 of Rev. Proc. 2006-09, should a transaction covered by a unilateral APA be subject to double taxation as the result of an adjustment by a foreign tax administration, the taxpayer may seek relief by requesting that the U.S. Competent Authority consider initiating a mutual agreement proceeding pursuant to an applicable income tax treaty (if any).

When a unilateral APA involves taxpayers operating in a country that is a U.S. treaty partner, information relevant to the APA (including a copy of the APA and APA annual reports) may be provided to the treaty partner under normal rules and principles governing the exchange of information under income tax treaties.

¹ Current CCDM provisions regarding APA procedures are available at <http://www.irs.gov/irm/part32/ch04s01.html>.

² Available at <http://www.irs.gov/pub/irs-irbs/irb96-49.pdf>.

³ Available at <http://www.irs.gov/pub/irs-irbs/irb98-52.pdf>.

⁴ Available at <http://www.irs.gov/pub/irs-irbs/irb04-29.pdf>.

⁵ Available at http://www.irs.gov/irb/2006-02_IRB/ar12.html.

⁶ Available at <http://www.irs.gov/pub/irs-irbs/irb08-31.pdf>.

The APA Program

An IRS team headed by an APA team leader is responsible for the consideration of each APA. As of December 31, 2009, the APA Program had 19 team leaders. The team leader is responsible for organizing the IRS APA team. The IRS APA team leader arranges meetings with the taxpayer, secures whatever information is necessary from the taxpayer to analyze the taxpayer's related party transactions and the available facts under the arm's length standard of IRC § 482 and the regulations thereunder, and leads the discussions with the taxpayer.

The APA team generally includes an economist, an LMSB international examiner, LMSB field counsel, and, in a bilateral case, a U.S. Competent Authority analyst who leads the discussions with the treaty partner. The economist may be from the APA Program or the IRS field organization. As of December 31, 2009, the APA Program had 8 economists on staff, plus one economist manager. The APA team may also include an LMSB International Technical Advisor, other LMSB exam personnel, and/or an Appeals Officer.

The APA Process

The APA process is voluntary. Taxpayers submit an application for an APA, together with a user fee as set forth in Rev. Proc. 2006–09, § 4.12. The APA process can be broken into five phases: (1) application; (2) due diligence; (3) analysis; (4) discussion and agreement; and (5) drafting, review, and execution.

(1) Application

In many APA cases, the taxpayer's application is preceded by a pre-file conference with the APA staff in which the taxpayer can solicit the informal views of the APA Program. Pre-file conferences can occur on an anonymous basis, although a taxpayer must disclose its identity when it applies for an APA. The APA Program has been requiring taxpayers interested in an APA under Rev. Proc. 2008–31 to schedule a pre-file conference before submitting a formal APA application.

As part of a taxpayer's APA application, the taxpayer must file the appropriate user fee on or before the due date, including extensions, of the tax return for the first taxable year that the taxpayer proposes to be covered by the APA. (If the taxpayer receives an extension to file its tax return, it must file its user fee no later than the actual filing date of the return.) Many taxpayers file a user fee first and then follow up with a full application later — a “dollar file” in APA parlance. The procedures for pre-file conferences, user fees, and applications can be found in §§ 3 and 4 of Rev. Proc. 2006–09.

The APA application can be a relatively modest document for small businesses. Section 9 of Rev. Proc. 2006–09 describes the special APA procedures for small business taxpayers. For most taxpayers, however, the APA application is a substantial document filling several binders. APA applications must be accompanied by a declaration, signed by an authorized corporate officer, attesting to the accuracy and completeness of the information presented.

The application is assigned to an APA team leader who is responsible for the case. The APA team leader's first responsibility is to organize the APA team. This involves contacting the appropriate LMSB International Territory Manager to secure the assignment of an international examiner to the APA case and the LMSB Counsel's office to secure a field counsel lawyer. In a bilateral case, the U.S. Competent Authority will assign a U.S. Competent Authority analyst to the team. In a large APA case, the international examiner may invite his or her manager and other LMSB personnel familiar with the taxpayer to join the team. If the APA may affect taxable years in Appeals, the appropriate appellate conferee will be invited to join the team. In cases involving cost-sharing arrangements, other complex intangibles and services transactions, or novel issues, the APA team leader contacts the Manager, LMSB International Technical Advisors, to determine whether or not to include a technical advisor on the team. The multi-functional nature of APA teams combines the APA Program's transfer pricing expertise and APA experience with other elements of the IRS that possess complementary or supplementary knowledge about the taxpayer, the taxpayer's industry, related or ancillary tax issues, the foreign competent authority, and other relevant issues. By bringing all relevant parties to the table in a single proceeding, the APA process is able to resolve transfer pricing issues early on in a more principled, efficient, consistent, and comprehensive manner than the standard administrative process (*i.e.*, audit, appeals, litigation).

The APA team leader distributes copies of the APA application to all team members, makes initial contact with the taxpayer to confirm the APA Program's receipt of the taxpayer's application, and sets up an opening conference with the taxpayer. Under current APA case management procedures, the APA office strives to (i) make initial contact with the taxpayer within 21 days of its receipt of the APA application and (ii) hold the opening conference within 45 days from the date that the APA team expects to begin actively working the case — the “Start Date” under the revised case management procedures. Because of heavy caseloads (especially among APA economists) and staff turnover during 2009, we were unable to hold many opening conferences within the 45-day target.

On or about the opening conference, the APA team leader proposes a case plan appropriate for the case. Case plans are generally targeted to complete a unilateral APA or, in the case of a bilateral APA, the recommended U.S. negotiating position within 12 months from the date the full application is filed. The targeted completion date in a particular case, however, may vary from the 12-month benchmark, depending on the complexity of the case, APA team workloads, taxpayer schedules, and other factors. Case plans are signed by both an APA manager and an authorized official of the taxpayer and, under the new APA case management procedures, will generally be adhered to except in unforeseen or exceptional circumstances. The actual median and average times for completing unilateral and bilateral APAs, recommended negotiating positions for bilateral APAs, and APAs for small business taxpayers are shown below in Tables 2, 5, and 11, respectively.

(2) Due Diligence

The APA team must satisfy itself that the relevant facts submitted by the taxpayer are complete and accurate. This due diligence aspect of the APA is vital to the process. It is because of this due diligence that the IRS can reach advance agreements with taxpayers in the highly factual setting of transfer pricing. Due diligence can proceed in a number of ways. Typically, the APA team leader will submit in advance of the opening conference a list of questions to the taxpayer for discussion at the conference. The opening conference may result in additional questions and an agreement to meet one or more times in the future. These questions and meetings are not an audit and are focused on the transfer pricing issues associated with the transactions in the taxpayer's application, or other transactions that the taxpayer and the IRS may agree to add.

(3) Analysis

A significant part of the analytical work associated with an APA is done typically by the APA economist and/or an IRS field economist assigned to the case. The analysis may result in the need for additional information. Once the IRS APA team has completed its due diligence and analysis, it begins discussions with the taxpayer over the various aspects of the APA including the covered transactions, the TPM, the selection of comparable transactions, asset intensity and other adjustments, the appropriate critical assumptions, the APA term, and other key issues. The APA team leader will discuss particularly difficult issues with his or her managers, but generally the APA team leader is empowered to negotiate the APA.

(4) Discussion and Agreement

The discussion and agreement phase differs for bilateral and unilateral cases. In a bilateral case, the discussions proceed in two parts and involve two IRS offices — the APA Program and the U.S. Competent Authority. In the first part, the APA team will attempt to reach a consensus with the taxpayer regarding the recommended position that the U.S. Competent Authority should take in negotiations with its treaty partner. This recommended U.S. negotiating position is a paper drafted by the APA team leader, reviewed by APA management, and signed by the APA Director that provides the APA Program's view of the best TPM for the Covered Transactions, taking into account IRC § 482 and the regulations thereunder, the relevant tax treaty, and the U.S. Competent Authority's experience with the treaty partner.

The experience of the APA office and the U.S. Competent Authority is that APA negotiations are likely to proceed more rapidly with a foreign competent authority if the U.S. negotiating position is fully supported by the taxpayer. Consequently, the APA office works together with the taxpayer in developing the recommended U.S. negotiating position. Often, however, the taxpayer will disagree with part or all of the recommended U.S. position. In these cases, the APA office will send a recommended U.S. negotiating position to the U.S. Competent Authority that identifies and explains the elements of the recommended position with which the taxpayer disagrees. The APA team leader also solicits the views of the other members of the APA team, and, in the vast majority of APA cases, the other members of the APA team concur in the position prepared by the APA team leader. If there is any disagreement, it is noted in the position paper.

After the APA Program completes the recommended U.S. negotiating position, the APA process shifts from the APA Program to the U.S. Competent Authority. The U.S. Competent Authority analyst assigned to the APA takes the recommended U.S. negotiating position and prepares the final U.S. negotiating position, which is then transmitted to the foreign competent authority. The negotiations with the foreign competent authority are conducted by the U.S. Competent Authority analyst, most often in face-to-face negotiating sessions conducted periodically throughout the year. At the request of the U.S. Competent Authority, APA Program staff may assist in the negotiations.

In unilateral APA cases, the discussions proceed solely between the APA Program and the taxpayer. In a unilateral case, the taxpayer and the APA Program must reach agreement to conclude an APA. As in bilateral cases, the APA team leader almost always will achieve a consensus with the IRS field personnel assigned to the APA team regarding the final APA. Under APA Program procedures, IRS field personnel assigned to a case are solicited formally for their concurrence in the final APA. This concurrence, or any item in disagreement, is noted in a memorandum prepared by the APA team leader that accompanies the final APA sent forward for review and execution.

(5) *Drafting, Review, and Execution*

Once the IRS and the taxpayer reach agreement, the final APA is drafted. The APA Program has developed standard language that is incorporated into every APA. The current version of this language is found in Attachment A. APAs are reviewed by the APA Branch Chief and the APA Director. In addition, the team leader prepares a summary memorandum for approval by the Associate Chief Counsel (International) (ACC(I)). On March 1, 2001, the ACC(I) delegated to the APA Director the authority to execute APAs on behalf of the IRS. *See* Chief Counsel Notice CC-2001-016. The APA is executed for the taxpayer by an appropriate corporate officer.

Model APA at Attachment A

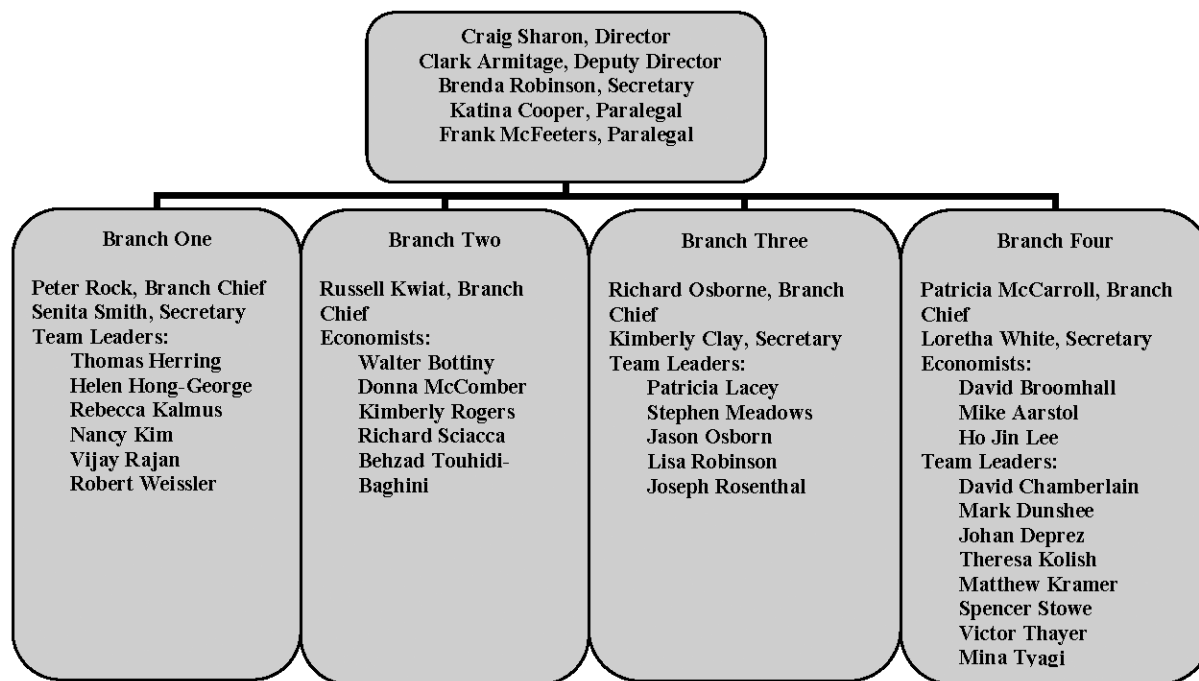
[§ 521(b)(2)(B)]

Attachment A contains the current version of the model APA language.

The Current APA Office Structure, Composition, and Operation

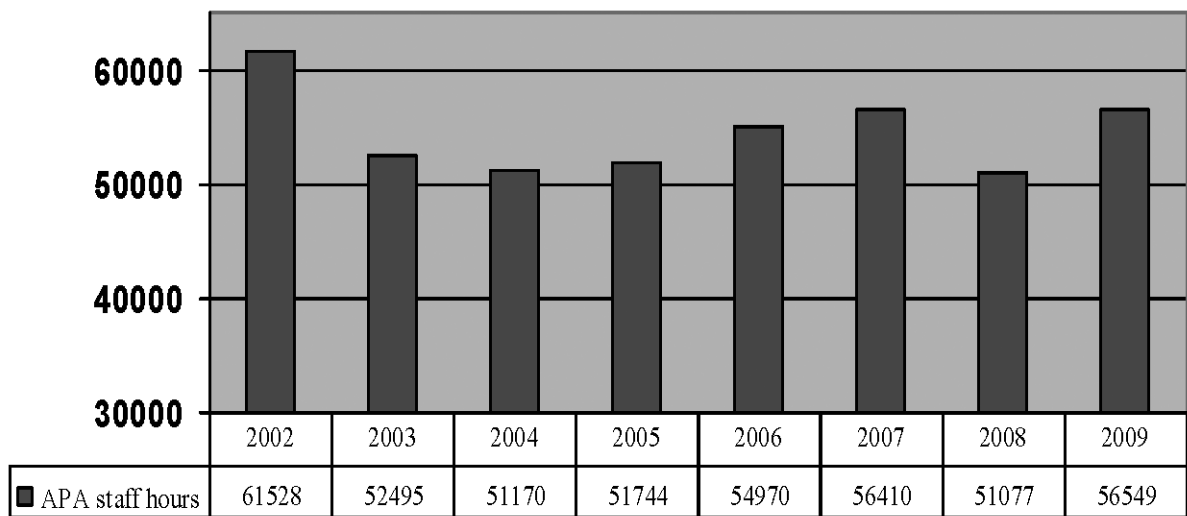
In 2009, the APA office consisted of four branches, with Branches 1 and 3 staffed with APA team leaders and Branch 2 staffed with economists based in Washington, D.C. Branch 4, the APA West Coast branch, is headquartered in Laguna Niguel, California, with an additional office in San Francisco, and is staffed with both team leaders and economists.

APA staffing fluctuated during 2009, starting at 33 at the end of 2008, falling to a low of 30 in early 2009, and building back up to 39 by the end of the year. As of December 31, 2009, the APA staff was as follows:



Consistent with the increase in total APA headcount from 2008 to 2009, total APA staffing measured by hours increased in 2009 compared to 2008. APA staff hours in 2009 were similar to APA staff hours in 2006 and 2007, when APA staffing levels were similar at year end (39 in 2009 vs. 40 in 2006 and 37 in 2007), with the small variation in staff hours due primarily to the timing of departures and hires within a year. The change in APA professional staffing levels over the last eight years is reflected in the table below.

Hours of APA attorneys, economists, and paralegal staff by year (excluding holiday and leave):

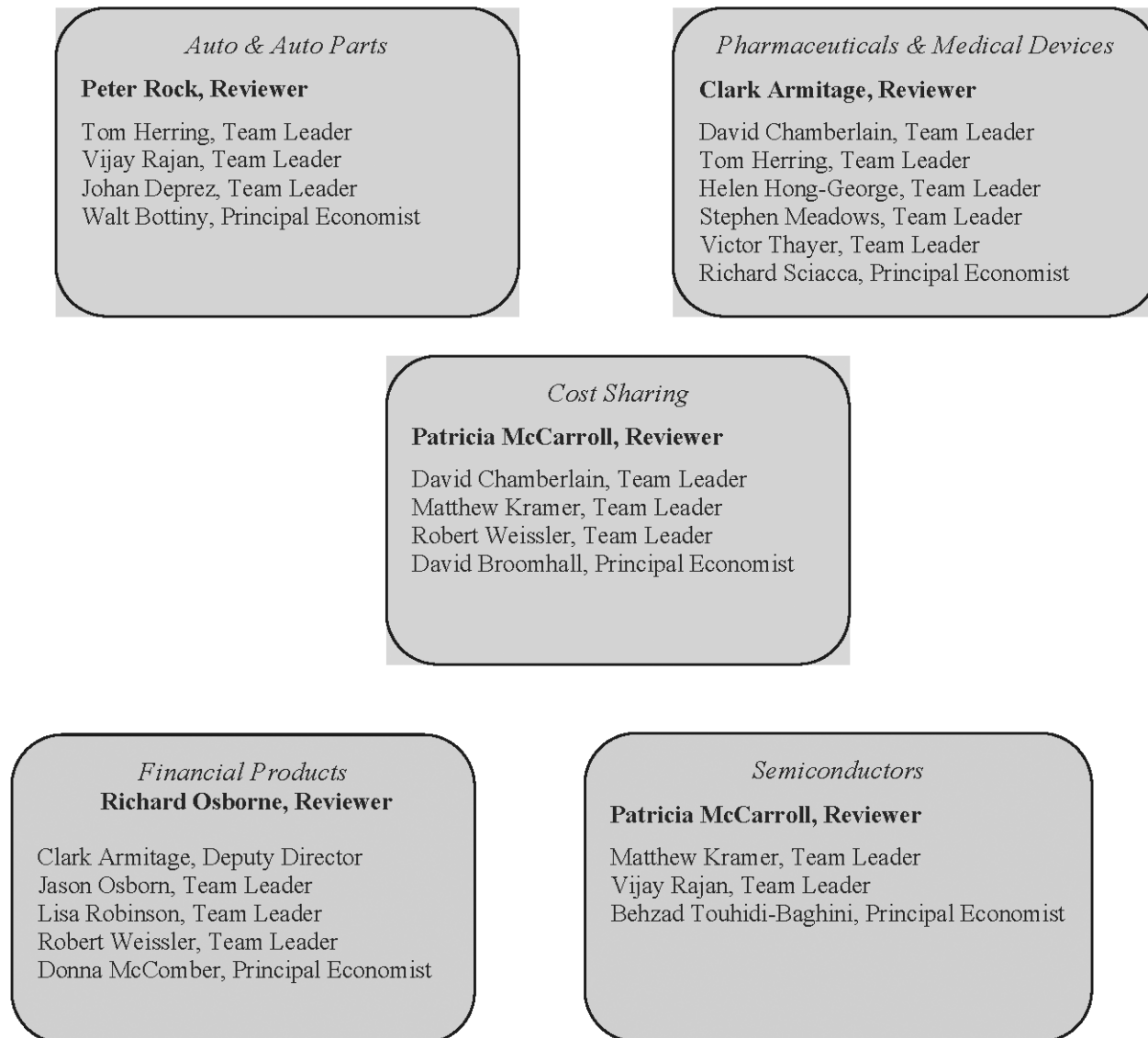


APA Issue/Industry Coordination Teams

In May 2005, the IRS Chief Counsel announced a series of initiatives to improve APA Program performance. One initiative was to increase specialization within the office by creating teams of select individuals to handle all cases of a particular type. The purpose was to increase efficiency, quality, and consistency.

The APA Program selected five categories of cases for specialization — cases involving cost sharing arrangements, financial products, the semiconductor industry, the automotive industry, and the pharmaceutical industry. These categories were selected because they each had a sufficient number of cases and commonality of issues to warrant their assignment to teams. Cases falling within these five categories have historically accounted for about 40 percent of the APA Program’s case load and about half of its total case time. At the end of 2009, cases within these five categories accounted for 86 of the 222 cases pending in the office that were either unilateral APAs or bilateral APAs that had not yet been forwarded to Competent Authority.

Staffing of the coordination teams at the end of 2009 is indicated below:



The APA Program is mindful that the purpose of the coordination effort is not to impose the same transfer pricing method on all taxpayers in an industry. The appropriate transfer pricing method remains a case-by-case determination, influenced by numerous factors that are not common to all companies operating in a particular industry. While the coordination effort may result in the APA Program promoting a common approach on some issues where appropriate, the Program expects that the greater industry familiarity developed through the coordination effort will also allow it to develop a more sophisticated understanding of issues that will permit more tailored approaches, thereby promoting more (appropriately) varied results than might otherwise be the case.

APA Training

In 2009, the APA office continued its training activities. Training sessions addressed APA-related current developments, the application of Rev. Proc. 2008-31, regulatory developments, new APA office practices and procedures, and international tax law issues. The training materials used for new hires are available to the public through the APA internet site at <http://www.irs.gov/businesses/corporations/article/0,,id=96221,00.html>. The APA's new-hire materials, which were originally prepared in 2003 and have not been updated, do not constitute guidance on the application of the arm's length standard and are not to be relied upon or cited as precedent. Also available to the public is a spreadsheet model that performs calculations in a Comparable Profits Method (CPM) analysis, which APA economists developed in 2007 and which is now routinely used by the APA office when performing APA analyses. An electronic version of the model may be obtained by contacting the APA office in Washington, D.C. at (202) 435-5220 (not a toll-free number).

APA Program Statistical Data

[§ 521(b)(2)(C) and (E)]

The statistical information required under § 521(b)(2)(C) is contained in Tables 1 and 10 below; the information required under § 521(b)(2)(E) is contained in Tables 2 and 3 below. The 127 APA applications during 2009 represented a new one-year high for the Program, following a record-breaking year in 2008 when we received 123 applications.⁷ From 2000–2007, the APA Program averaged 91 applications per year, and it had never received more than 110 applications in a single year. The APA Program expects APA applications to continue in 2010 at the same high levels as in 2008 and 2009.

TABLE 1: APA APPLICATIONS, EXECUTED APAs, AND PENDING APAs

	Unilateral	Bilateral	Multilateral	Year Total	Cumulative Total
APA applications filed during 2009	39	88		127	1,379
All APAs executed ⁸					904
Year 2009	21	42	0	63	
1991–2008	364	464	13	841	
APA renewals executed during 2009	8	20		28	261
APAs revised or amended during 2009	4	4		8	61
Pending requests for APAs	70	282		352	
Pending requests for new APAs	47	174		221	
Pending requests for renewal APAs	23	108		131	
APAs canceled or revoked	0	0		0	9
APAs withdrawn	6	8		14	146

TABLE 2: MONTHS TO COMPLETE APAS

Months to Complete Advance Pricing Agreements in 2009					
All New		All Renewals		All Combined	
Average	38.0	Average	37.9	Average	37.9
Median	33.6	Median	31.4	Median	33.1
Unilateral New		Unilateral Renewals		Unilateral Combined	
Average	25.5	Average	20.5	Average	23.6
Median	19.2	Median	15.1	Median	18.2

⁷ Of the 127 new APA applications in 2009 — the first full year in which Rev. Proc. 2008–31 was in effect — approximately ten submissions invoked APA jurisdiction under Rev. Proc. 2008–31.

⁸ “All APAs executed” includes APA renewals, but not APAs revised or amended.

Months to Complete Advance Pricing Agreements in 2009					
Bilateral/Multilateral New		Bilateral/Multilateral Renewals		Bilateral/Multilateral Combined	
Average	45.4	Average	44.9	Average	45.1
Median	42.1	Median	37.9	Median	40.6

TABLE 3: APA COMPLETION TIME – MONTHS PER APA

Months	Number of APAs	Months	Number of APAs	Months	Number of APAs
1		26		51	1
2		27	1	52	2
3		28		53	
4		29	1	54	2
5		30	1	55	2
6		31	2	56	3
7		32	1	57	
8		33	4	58	1
9	2	34	1	59	
10		35		60	
11	1	36	2	61	
12	3	37	1	62	1
13	1	38	2	63	
14		39		64	
15		40		65	
16	2	41	3	66	1
17	1	42	1	67	
18	3	43		68	
19	1	44	2	69	
20	2	45	1	70–79	
21	1	46		80	2
22		47		87	1
23	2	48		92	1
24	1	49		122	1
25	2	50			

TABLE 4: RECOMMENDED NEGOTIATING POSITIONS

Recommended Negotiating Positions Completed in 2009	35
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Table 5: MONTHS TO COMPLETE RECOMMENDED NEGOTIATING POSITIONS

New		Renewal		Combined	
Average	18.5	Average	21.0	Average	19.9
Median	17.2	Median	21.0	Median	18.6

TABLE 6: RECOMMENDED NEGOTIATING POSITIONS COMPLETION TIME – MONTHS PER APA

Months	Number	Months	Number	Months	Number	Months	Number
1		12		23	1	34	
2		13		24	2	35	
3		14	2	25	1	36	1
4	1	15	1	26		37	
5		16	2	27		38	
6		17	4	28		39	
7	1	18	3	29	3	40	
8		19	1	30	1	41	
9		20		31		42	
10	1	21	3	32	1	43	
11	2	22	3	33	1	44	

TABLES 7 AND 8 BELOW SHOW HOW LONG EACH APA REQUEST PENDING AT THE END OF 2009 HAS BEEN IN THE SYSTEM AS MEASURED FROM THE FILING DATE OF THE APA SUBMISSION. THE NUMBERS FOR PENDING UNILATERAL AND BILATERAL CASES DIFFER FROM THE NUMBERS IN TABLE 1 BECAUSE TABLES 7 AND 8 REFLECT ONLY CASES FOR WHICH SUBMISSIONS HAVE BEEN RECEIVED, WHILE TABLE 1 INCLUDES ANY CASE FOR WHICH A USER FEE HAS BEEN PAID.

TABLE 7: UNILATERAL APAs – TIME IN INVENTORY – MONTHS PER APA

Months	Number of APAs	Months	Number of APAs	Months	Number of APAs	Months	Number of APAs
1	7	9	2	17		25	3
2	1	10	1	18	4	26	
3	1	11	3	19	2	27	
4	3	12	1	20	1	28	
5	2	13	4	21	2	29	1
6	4	14		22	3	30	1
7		15	1	23		43	1
8	5	16	1	24	3		

TABLE 8: BILATERAL APAs – TIME IN INVENTORY – MONTHS PER APA

Months	Number of APAs	Months	Number of APAs	Months	Number of APAs	Months	Number of APAs
1	12	25	7	49	1	73	
2	3	26	3	50	1	74	
3	2	27	4	51	2	75	
4	8	28	5	52	1	76	
5	7	29	6	53	2	77	
6	8	30	2	54	1	78	
7	9	31	4	55		79	
8	12	32	1	56	1	80	
9	7	33	8	57	3	81	
10	6	34		58		82	
11	6	35	4	59	1	83	1
12	10	36	4	60	2	84	
13	9	37	3	61		85	1
14	5	38		62		86	
15	3	39	1	63	2	87	
16	8	40	6	64		88	
17	9	41		65		89	
18	4	42	1	66		90	
19	8	43	1	67		91	
20	3	44	1	68	1	92	
21	10	45	1	69		93	
22	5	46	1	70	2	94	1
23	12	47	1	71		95	
24	4	48	6	72		96+	

Of the 321 cases in the APA Program's inventory shown in Tables 7 and 8, 99 cases (all of which are reflected in Table 8) are bilateral cases that have been forwarded to the Competent Authority office for discussion with a treaty partner. This leaves 222 cases in the APA Program's active inventory at the end of 2009 that are either unilateral APAs (57 cases) or bilateral APAs for which the APA Program has not yet completed a recommended negotiating position (165 cases). Of the 222 active APA cases, 20 involve small business taxpayer (SBT) cases, as defined in Rev. Proc. 2006-9, § 4.12(5).

The table below shows the average age (in months) of the 222 active cases in inventory at the end of 2009, along with a comparison of the number of active cases and their average age at year-end for each year back to 2004. The table also shows the same information for cases that were at least 6-months old or 1-year old (the latter being a subset of the former) at the end of each year to allow comparison without potential distortions caused by year-to-year variations in the number of cases received in the latter half or during the course of the year. The build-up in inventory during 2009 primarily reflects the delays caused by the significant fluctuations in APA personnel combined with the record number of new APA applications during the past two years. The increases in APA applications and inventory levels have, in fact, masked improvements in recent years in APA productivity, as measured by the number of completed APA items (*e.g.*, APAs, APA amendments, and recommended US negotiating positions) divided by total APA staff hours during a year.

TABLE 9: NUMBER AND AVERAGE AGE OF ACTIVE CASES IN INVENTORY AT YEAR-END

	2004	2005	2006	2007	2008	2009
Active cases	130	133	110	105	161	222
Average age (months)	15.2	13.2	10.6	9.1	10.2	12.9
Active cases 6+ months	106	87	81	66	110	176
Average age (months)	17.8	18.5	13.0	13.0	13.5	15.6
Active cases 1+ year	60	55	32	27	51	116
Average age (months)	24.2	23.3	19.4	18.5	18.7	19.5

TABLE 10: SMALL BUSINESS TAXPAYER APAs

Small Business Taxpayer APAs Completed in 2009	5
New	4
Renewals	1
Unilateral	2
Bilateral	3

TABLE 11: MONTHS TO COMPLETE SMALL BUSINESS TAXPAYER APAs

Months to Complete Small Business Taxpayer APAs in 2009					
New		Renewal		Combined	
Average	29.3	Average	21.6	Average	27.7
Median	29.3	Median	21.6	Median	23.1

Although the APA Program strives to complete SBT cases on an expedited basis, our experience is that such cases require nearly the same level of resources and the same commitment of time as non-SBT cases. This phenomenon may be explained by a number of factors, including the fact that the complexity or novelty of transfer pricing issues do not necessarily depend on the dollar volume of the related-party transactions, the lesser transfer pricing experience and/or resources of many SBTs, and the importance to both SBTs and non-SBTs of obtaining APA outcomes that reflect each taxpayer's particular facts and circumstances (as opposed to an analysis based on streamlined factual development and general transfer pricing principles).

TABLE 12: INDUSTRIES COVERED⁹

Industry Involved – NAICS Codes	Number
Wholesale trade, durable goods – 421	10–12
Wholesale trade, nondurable goods – 422	10–12
Transportation equipment manufacturing – 336	7–9
Computer and electronic product manufacturing – 334	4–6
Motor vehicle and parts dealers – 441	4–6
Chemical manufacturing – 325	4–6
Electronic equipment, appliance, and component manufacturing – 335	1–3
Machinery manufacturing – 333	1–3
Apparel manufacturing – 315	1–3
Oil and gas extraction – 212	1–3
Publishing industries – 511	1–3
Miscellaneous manufacturing – 339	1–3
Professional, scientific, and technical services – 545	1–3
Information service and data processing – 514	1–3
Fabricated metal manufacturing – 332	1–3
Food and beverage stores – 445	1–3
Wood product manufacturing – 321	1–3
Electronic and appliance stores – 443	1–3

Trades or Businesses

[§ 521(b)(2)(D)(i)]

The nature of the relationships between the related organizations, trades, or businesses covered by APAs executed in 2009 is set forth in Table 13 below:

TABLE 13: NATURE OF RELATIONSHIPS BETWEEN RELATED ENTITIES

Relationship	Number of APAs
Foreign Parent – U.S. Subsidiary (-ies)	45
<i>Unilateral</i>	18
<i>Bilateral</i>	27
U.S. Parent – Foreign Subsidiary (-ies)	≤ 16
<i>Unilateral</i>	≤ 3
<i>Bilateral</i>	13
Partnership	≤ 3

⁹ The categories in this table are drawn from the North American Industry Classification System (NAICS), which has replaced the U.S. Standard Industrial Classification (SIC) system. NAICS was developed jointly by the United States, Canada, and Mexico to provide new comparability in statistics about business activity across North America.

Covered Transactions

[§ 521(b)(2)(D)(ii)]

The controlled transactions covered by APAs executed in 2009 are set forth in Tables 14 and 15 below:

TABLE 14: TYPES OF COVERED TRANSACTIONS

Transaction Type	Number
Sale of tangible property into the United States	29
Performance of services by U.S. entity	18
Use of intangible property by non-U.S. entity	15
Performance of services by non-U.S. entity	14
Use of intangible property by U.S. entity	10
Sale of tangible property from the United States	9
Other	8
Cost Sharing – U.S. parent/foreign subsidiary	≤ 3

TABLE 15: TYPES OF SERVICES INCLUDED IN COVERED TRANSACTIONS

Intercompany Services Involved in the Covered Transactions	Number
Marketing	10
Headquarter costs	7
Contract research and development	6
Technical support services	5
Distribution	5
Administrative	5
Logistical support	4
Sales support	4
Purchasing	4
IT	4
Research and development	≤ 3
Legal	≤ 3
Corporate and public relations	≤ 3
Warranty services	≤ 3
Tax	≤ 3
Management	≤ 3
Assembly	≤ 3
Health, safety, environmental, and regulatory affairs	≤ 3
Accounting and auditing	≤ 3
Product support	≤ 3
Benefits	≤ 3

Intercompany Services Involved in the Covered Transactions	Number
Staffing and recruiting	≤ 3
Accounts receivable	≤ 3
Payroll	≤ 3
Treasury activities	≤ 3
Budgeting	≤ 3

Business Functions Performed and Risks Assumed

[§ 521(b)(2)(D)(ii)]

The general descriptions of the business functions performed and risks assumed by the organizations, trades, or businesses whose results are tested in the Covered Transactions in the APAs executed in 2009 are set forth in Tables 16 and 17 below:

TABLE 16: FUNCTIONS PERFORMED BY THE TESTED PARTY

Functions Performed	Number
Distribution	59
Manufacturing	41
Product service	35
Marketing functions	29
Research and development	16
Purchasing and materials management	13
Transportation and warehousing	13
Product assembly or packaging	12
Product testing and quality control	11
Managerial, legal, accounting, finance, personnel, and other support services	10
Product design and engineering	8
Licensing of intangibles	8
Technical training and technical support	8
Process engineering	4
Engineering and construction-related services	≤ 3

TABLE 17: RISKS ASSUMED BY THE TESTED PARTY

Risks Assumed	Number
Market risks, including fluctuations in costs, demand, pricing, and inventory	73
General business risks (<i>e.g.</i> , related to ownership of PP&E)	61
Credit and collection risks	47
Product liability risks	38
Financial risks, including interest rates and currency	30
Research and development risks	15

Discussion

The majority of APAs have Covered Transactions that involve numerous business functions and risks. For instance, with respect to functions, multinational groups that manufacture products typically conduct research and development (R&D), engage in product design and engineering, manufacture the product, market and distribute the product, and perform support functions such as legal, finance, and human resources services. Regarding risks, these groups are subject to market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process, a significant amount of time and effort is devoted to understanding how the functions and risks are allocated among the controlled group of companies that are party to the Covered Transactions.

In its APA submission, the taxpayer must provide a functional analysis. The functional analysis identifies the economic activities performed, the assets employed, the economic costs incurred, and the risks assumed by each of the controlled parties. The importance of the functional analysis derives from the economic theory positing that there is a positive relationship between risk and expected return and that different functions provide different value and have different opportunity costs associated with them. It is important that the functional analysis go beyond simply categorizing the tested party as, say, a distributor. It should provide more specific information because, in the example of distributors, not all distributors undertake similar functions and risks.

The functional analysis is critical in determining the appropriate TPM (including the selection of comparables, tested party, and profit level indicator (PLI)). In conjunction with evaluating the functional analysis, the APA Program considers contractual terms between the controlled parties, the allocation of risk between the parties, the relevant economic conditions, and the type of property or services at issue. In assessing contractual terms and risk allocations, the APA Program considers not only written agreements between the parties, but also the economic substance of the transactions as indicated by the conduct of the parties over time, the financial capacity of each party to fund losses arising from risks, and the managerial or operational control each party exercises over activities giving rise to risk. Relevant economic conditions reviewed often include the geographic market and the level of the market in which the functions are performed, and the business cycle or general economic condition of the industry under review.

During 2009, the APA Program received numerous inquiries about the potential effect of the economic downturn on existing and pending APAs. On existing APAs, the APA Program, in consultation with the U.S. Competent Authority, has adopted a general policy not to re-open closed cases absent a special Critical Assumption on point.¹⁰ The APA Program has dealt with pending APA applications (whether pending with the U.S. Competent Authority or the APA Program) on a case-by-case basis. Whether or not a special “down-economy adjustment” might be appropriate depends on a variety of factors, including whether or not the tested party and the comparables have been similarly affected by the downturn, the tested party’s historic risk profile and performance, and a taxpayer’s willingness to accept a symmetrical adjustment (*e.g.*, in a renewal APA) when the economy improves. Approaches to the down economy that have been considered include changing the APA term, waiting for more current financial data, using a different set of comparables, and/or applying a longer testing period.

The APA Program’s evaluation of the functional analysis also considers the assets or other resources employed by each controlled party. In this evaluation, each party’s ownership or investment in valuable intangible assets is often an important consideration.

Related Organizations, Trades, or Businesses Whose Prices or Results Are Tested to Determine Compliance with APA Transfer Pricing Methods

[§ 521(b)(2)(D)(iii)]

The related organizations, trades, or businesses whose prices or results are tested to determine compliance with TPMs prescribed in APAs executed in 2009 are set forth in Table 18 below:

¹⁰ See Table 21 and accompanying text.

**TABLE 18: RELATED ORGANIZATIONS, TRADES, OR BUSINESSES WHOSE
PRICES OR RESULTS ARE TESTED¹¹**

Type of Organization	Number
U.S. distributor	31
U.S. manufacturer	17
U.S. provider of services	17
Non-U.S. manufacturer	7
Non-U.S. provider of services	7
Non-U.S. distributor	5
Other	5
U.S. licensor of intangible property	≤ 3
Non-U.S. licensor of intangible property	≤ 3
Non-U.S. participant in cost sharing agreement	≤ 3

Transfer Pricing Methods and the Circumstances Leading to the Use of Those Methods
[§ 521(b)(2)(D)(iv)]

The TPMs used in APAs executed in 2009 are set forth in Tables 19 and 20 below:

**TABLE 19: TRANSFER PRICING METHODS USED FOR TRANSFERS OF
TANGIBLE AND INTANGIBLE PROPERTY¹²**

TPM Used	Number
CPM: PLI is operating margin	30
CPM: PLI is Berry ratio	14
Unspecified method	12
Residual profit split	9
CPM: PLI is return on assets or capital employed	7
CPM: PLI is markup on total costs	7
CUT (intangibles only)	5
Comparable Other profit split profit split	≤ 3
Cost Plus Method (tangibles only)	≤ 3
CPM: PLI is other PLI	≤ 3
CPM: PLI is gross margin	≤ 3
CPM: PLI is markup on other costs	≤ 3

¹¹ "Multiple tested parties" includes covered transactions that utilize profit splits, CUPs, and CUTs.

¹² PLIs used with the Comparable Profit Method of Treas. Reg. § 1.482-5, and as used in these TPM tables, are as follows: (1) operating margin (ratio of operating profit to sales); (2) Berry ratio (ratio of gross profit to operating expenses); (3) gross margin (ratio of gross profit to sales); (4) markup on total costs (percentage markup on total costs); and (5) rate of return on assets or capital employed (ratio of operating profit to operating assets).

TABLE 20: TRANSFER PRICING METHODS USED FOR SERVICES

TPM Used	Number
CPM: PLI is operating profit to total services cost ratio	11
Services Cost Method: Specified Covered Services	4
CPM: PLI is operating margin	≤ 3
CPM: PLI is Berry ratio	≤ 3
CPM: PLI is return on assets or capital employed	≤ 3
Cost of Services Plus Method	≤ 3
Services Cost Method: Low Margin Covered Services	≤ 3
Comparable Uncontrolled Services Price Method	≤ 3

Discussion

The TPMs used in APAs completed during 2009 were based on the section 482 regulations. Under Treas. Reg. § 1.482–3, the arm’s length amount for controlled transfers of tangible property may be determined using the Comparable Uncontrolled Price (CUP) Method, the Resale Price Method, the Cost Plus Method, the Comparable Profits Method (CPM), or the Profit Split Method. Under Treas. Reg. § 1.482–4, the arm’s length amount for controlled transfers of intangible property may be determined using the Comparable Uncontrolled Transaction (CUT) Method, the CPM, or the Profit Split Method. An “Unspecified Method” may be used for transfers of either tangible or intangible property if it provides a more reliable result than the enumerated methods under the best method rule of Treas. Reg. § 1.482–1(c).

For transfers involving the provision of services, Treas. Reg. § 1.482–2(b) provided that services performed for the benefit of another member of a controlled group should bear an arm’s length charge, either deemed to be equal to the cost of providing the services or an amount that would have been charged between independent parties. Generally effective beginning in 2007, Temp. Reg. § 1.482–9T provides that the arm’s length charge for controlled services transactions may be determined under the Services Cost Method, the Comparable Uncontrolled Services Price (CUSP) Method, the Gross Services Margin Method, the Cost of Services Plus Method, the CPM, the Profit Split Method, or an Unspecified Method. In addition, Treas. Reg. § 1.482–2(a) provides rules concerning the proper treatment of loans or advances.

On January 5, 2009, the IRS issued new temporary regulations, Treas. Reg. § 1.482–7T, which provide rules for qualified cost sharing arrangements under which the parties agree to share the costs of developing intangibles in proportion to their shares of reasonably anticipated benefits. APAs involving cost sharing arrangements generally address both the method of allocating costs among the parties as well as determining the appropriate amount of the payment for “platform contribution transactions” (PCTs) due for the transfer of pre-existing intangibles, and the commitment of services with embedded intangibles, among the controlled participants (known as “buy ins” in the previous cost-sharing regulations). In 2009, the APA Program completed its recommendations on three or fewer bilateral cost sharing/PCT cases and sent those on to Competent Authority. In addition, the APA Program is currently working on nearly ten cases involving cost-sharing/PCTs, split almost evenly between bilateral and unilateral. The PCT cases include both initial and subsequent buy-in/buy-out transactions. The methods used in the completed and pending PCT cases include valuations based on the income method, including cases involving a split of the discounted present value of platform contributions made by two or more parties, and other types of analyses.

In reviewing the TPMs applicable to transfers of tangible and intangible property reflected in Table 19, the majority of the APAs followed the specified methods. However, several points should be made. The section 482 regulations note that for transfers of tangible property, the CUP Method will generally be the most direct and reliable measure of an arm’s length price for the controlled transaction if sufficiently reliable comparable transactions can be identified. Treas. Reg. § 1.482–3(b)(2)(ii)(A). As in earlier years, it was the experience of the APA Program in 2009, that in the cases that came into the APA Program, sufficiently reliable CUP transactions were difficult to find.

Similar to the CUP Method, for transfers of intangible property, the CUT Method will generally provide the most reliable measure of an arm’s length result if sufficiently reliable comparables may be found. Treas. Reg. § 1.482–4(c)(2)(ii). It has generally been difficult to identify external comparables, and APAs using the CUT Method tend to rely on internal transactions between the taxpayer and unrelated parties. In 2009, five Covered Transactions utilized the CUT TPM.

The Resale Price Method was not applied in 2009. See Treas. Reg. § 1.482–3(c), (d).

The CPM is frequently applied in APAs. That is because reliable public data on comparable business activities of independent companies may be more readily available than potential CUP data, and comparability of resources employed, functions, risks, and other relevant considerations are more likely to exist than comparability of product. The CPM also tends to be less sensitive than other methods to differences in accounting practices between the tested party and comparable companies, *e.g.*, classification of expenses as cost of goods sold or operating expenses. Treas. Reg. § 1.482–3(c)(3)(iii)(B) and (d)(3)(iii)(B). In addition, the degree of functional comparability required to obtain a reliable result under the CPM is generally less than that required under the Resale Price Method or the Cost Plus Method. Lesser functional comparability is required because differences in functions performed often are reflected in operating expenses, and thus taxpayers performing different functions may have very different gross profit margins but earn similar levels of operating profit. Treas. Reg. § 1.482–5(c)(2).

Table 19 reflects at least 61 uses of the CPM (with varying PLIs) in Covered Transactions involving tangible or intangible property. In some APAs, the CPM was also used concurrently with other methods.

The CPM has proven to be versatile in part because of the various PLIs that can be used in connection with the method. Reaching agreement on the appropriate PLI has been the subject of much discussion in many of the cases, and it depends heavily on the facts and circumstances. Some APAs have called for different PLIs to apply to different parts of the Covered Transactions or applied a secondary PLI as a check against the primary PLI.

The CPM was also used regularly with services as the Covered Transactions in APAs executed in 2009. There were at least 14 services Covered Transactions using the CPM Method with various PLIs according to the specific facts of the taxpayers involved. At least five services-related APAs completed in 2009 applied the new Services Cost Method under the § 1.482–9T regulations. Table 20 reflects the methods used to determine the arm’s length results for APAs involving services transactions.

In 2009, nine APAs involving tangible or intangible property used the Residual Profit Split Method. Treas. Reg. § 1.482–6(c)(3). In residual profit split cases, routine contributions by the controlled parties are allocated routine market returns, and the residual income is allocated among the controlled taxpayers based upon the relative value of their contributions of non-routine intangible property to the relevant business activity.

Profit splits have also been used in a number of financial product APAs in which the primary income-producing functions are performed in more than one jurisdiction.

Critical Assumptions

[§ 521(b)(2)(D)(v)]

Critical Assumptions used in APAs executed in 2009 are described in Table 21 below:

TABLE 21: CRITICAL ASSUMPTIONS

Critical Assumptions involving the following:	Number of APAs
Material changes to tax and/or financial accounting practices	63
Material changes to the business	63
Assets will remain substantially same	15
Other	10
Changes in affiliated companies	≤ 3
Material sales fluctuations	≤ 3
Currency fluctuations	≤ 3
Other financial ratios	≤ 3

Discussion

APAs include critical assumptions upon which their respective TPMs depend. A critical assumption is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions, the continued existence of which is material to the taxpayer's proposed TPM. Critical assumptions might include, for example, a particular mode of conducting business operations, a particular corporate or business structure, or a range of expected business volume. Rev. Proc. 2006–09, § 4.05. Failure to meet a critical assumption may render an APA inappropriate or unworkable. Most APAs contain only the standard critical assumption language set forth in Appendix B of the Model APA (Attachment A to this Announcement and Report). Where appropriate, additional critical assumption language may be added, but the APA Program generally seeks to limit additional critical assumption language to objective, measurable benchmarks.

A critical assumption may change or fail to materialize due to changes in economic circumstances, such as a fundamental and dramatic change in the economic conditions of a particular industry. In addition, a critical assumption may change or fail to materialize due to a taxpayer's actions that are initiated for good faith business reasons, such as a change in business strategy, mode of conducting operations, or the cessation or transfer of a business segment or entity covered by the APA.

If a critical assumption has not been met, the APA may be revised by agreement of the parties. If such an agreement cannot be achieved, the APA is canceled. If a critical assumption has not been met, the taxpayer must notify and discuss the APA terms with the Service, and, in the case of a bilateral APA, competent authority consideration is initiated. Rev. Proc. 2006–09, §§ 11.05, 11.06.

Sources of Comparables, Selection Criteria, and the Nature of Adjustments to Comparables and Tested Parties [§ 521(b)(2)(D)(v), (vi), and (vii)]

The sources of comparables, selection criteria, and rationale used in determining the selection criteria for APAs executed in 2009 are described in Tables 22 through 24 below. Various formulas for making adjustments to comparables are included as Attachment B.

TABLE 22: SOURCES OF COMPARABLES

Comparable Sources	Number of Times This Source Used
Compustat	78
Disclosure	31
No Comparables used	19
Worldscope	15
Other	14
Global Vantage	10
Moody's	9
Global Symposium	7
Osiris	≤ 3
Mergent FIS	≤ 3
Japan Accounts and Data on Enterprises (JADE)	≤ 3
Orbis	≤ 3
Bonds Franchise Guide	≤ 3

TABLE 23: COMPARABLES SELECTION CRITERIA

Selection Criteria Considered	Number of Times This Criterion Used
Comparable functions	81
Comparable risks	56
Comparable industry	56
Comparable intangibles	33
Comparable products	30
Comparable terms	6

TABLE 24: ADJUSTMENTS TO COMPARABLES OR TESTED PARTIES

Adjustment	Number of Times Used
Balance sheet adjustments	
Payables	54
Receivables	52
Inventory	52
Property, plant, equipment	4
Other	≤ 3
Accounting adjustments	
LIFO to FIFO inventory accounting	34
Other	15
Accounting reclassifications (<i>e.g.</i> , from COGS to operating expenses)	≤ 3
Profit level indicator adjustments (used to “back into” one PLI from another PLI)	
Operating expense	≤ 3
Other	≤ 3
Miscellaneous adjustments	
Other	6
Goodwill value or amortization	≤ 3
Stock-based compensation	≤ 3
Geographic adjustments	≤ 3

Discussion

At the core of most APAs are comparables. The APA Program works closely with taxpayers to find the best and most reliable comparables for each Covered Transaction. In some cases, CUPs or CUTs can be identified. In other cases, profit data on comparable business activities of independent companies are used in applying the CPM or a Profit Split Method. Generally, in the APA Program’s experience since 1991, CUPs and CUTs have been most often derived from the internal transactions of the taxpayer.

For profit-based methods in which comparable business activities or functions of independent companies are sought, the APA Program typically has selected them using a three-part process. First, a pool of companies with potentially comparable business activities has been identified through broad searches. From this pool, companies performing business activities that are clearly not comparable to those of the tested party have been eliminated through the use of quantitative and qualitative analyses, *i.e.*, quantitative screens and review of business descriptions. Then, based on a review of available descriptive and financial data, a set of comparable independent companies has been finalized. The comparability of the final set has then been enhanced by adjusting their financial data.

Sources of Comparables

Comparables used in APAs can be U.S. or foreign, depending on the relevant market, the type of transaction being evaluated, the availability of relevant data, and the results of the functional and risk analyses. In general, comparables have been located by searching a variety of databases that provide data on U.S. publicly traded companies and on a combination of public and private non-U.S. companies. Table 22 shows the various databases and other sources used in selecting comparables for the APAs executed in 2009.

Although comparables were most often identified from the databases cited in Table 22, in some cases, comparables were found from other sources, such as comparables derived internally from taxpayer transactions with third parties.

Selecting Comparables

Initial pools of potential comparables generally are derived from the databases using a combination of industry and keyword identifiers. Then, the pool is refined using a variety of selection criteria specific to the transaction or business activity being tested and the TPM being used.

The listed databases allow for searches by industrial classification, by keywords, or by both. These searches can yield a number of companies whose business activities may or may not be comparable to those of the entity being tested. Therefore, comparables based solely on industry classification or keyword searches are rarely used in APAs. Instead, the pool of comparables is examined closely, and companies are selected based on a combination of screens, business descriptions, and other information such as that found in the companies' Annual Reports to shareholders and filings with the U.S. Securities and Exchange Commission (SEC), company websites, and investment analyst reports.

Business activities of independent companies generally must meet certain basic comparability criteria to be considered comparable. The independent company's functions, risks, and economic conditions, and the property (product or intangible) and services associated with the company's business activities, must be comparable to those involved in the Covered Transaction. Determining comparability requires judgment — the goal has been to use comparability criteria restrictive enough to eliminate business activities that are not comparable, but yet not so restrictive as to leave no comparables remaining. The APA Program normally has begun with relatively strict comparability criteria and then has relaxed them slightly if necessary to derive a pool of reliable comparables. A determination on the appropriate size of the comparables set, as well as the business activities that comprise the set, is highly fact-specific and depends on the reliability of the results.

In addition, the APA Program, consistent with the section 482 regulations, generally has looked at the results of comparables over a multi-year period (the analysis window). Often this has been a three-year or a five-year period, but other periods are sometimes used depending on the circumstances of the controlled transaction. Using a shorter period might result in the inclusion of comparables in different stages of economic development or use of atypical years of a comparable due to cyclical fluctuations in business conditions. The economic downturn has focused particular attention on the appropriate analysis window for APAs with terms that include 2008 and 2009, given the different economic conditions that may have confronted the comparables during the years comprising the analysis window, which typically lags behind the years covered by an APA (*e.g.*, the comparables results for 2004–08 may be used to test the taxpayer's results under the APA from 2008–2012). As noted in the discussion following Table 17, the APA Program has been dealing with the economic downturn in various ways, including waiting for more current comparables' financial data to develop a more contemporaneous analysis window.

Many Covered Transactions have been tested with comparables that have been chosen using additional criteria and/or screens. These include sales level criteria and tests for financial distress and product comparability. These common selection criteria and screens have been used to increase the overall comparability of a group of companies and as a basis for further research. The sales level screen, for example, has been used to remove companies that, due to their smaller size, might face fundamentally different economic conditions from those of the transaction or business activities being tested. In addition, APA analyses have incorporated selection criteria designed to identify and remove companies experiencing "financial distress" because of concerns that companies in financial distress face unusual circumstances and operational constraints that render them not comparable to the business activity being tested. These "financial distress" criteria may include an unfavorable auditor's opinion, bankruptcy, failure to comply with financial obligations (*e.g.*, debt covenants), and, in certain circumstances, operating losses in a given number of years.

An additional important class of selection criteria is the development and ownership of intangible property. Most often, comparables are sought to test the results of a business activity that does not employ significant intangible assets or engage in intangible development. Thus, for example, in some cases in which the tested business activity is manufacturing conducted by a controlled entity that does not own significant manufacturing intangibles or conduct R&D, several criteria have been used to ensure that the comparables similarly do not own significant intangibles or conduct R&D. These selection criteria have included determining the importance of patents to a company or screening for R&D expenditures as a percentage of sales. Similar selection criteria may be applied to ensure, where appropriate, that the comparables do not own or develop significant marketing intangibles such as valuable trademarks. Again, quantitative screens related to identifying comparables with significant intangible property generally have been used in conjunction with an understanding of the comparable derived from publicly available business information.

Selection criteria relating to asset comparability and operating expense comparability have also been used at times. A screen of property, plant, and equipment (PP&E) as a percentage of sales or assets, combined with a reading of a company's SEC filings, has been used to help ensure that distributors (generally lower PP&E) were not compared with manufacturers (generally higher PP&E), regardless of their industry classification. Similarly, a test involving the ratio of operating expenses to sales has helped to determine whether a company undertakes a significant marketing and distribution function.

Table 25 shows the number of times various screens were used in APAs executed in 2009:

TABLE 25: COMPARABILITY SCREENS

Comparability/Financial Distress Screen	Times Used
Comparability screens used	
R&D/sales	40
Foreign sales/total sales	26
Sales	26
Other	22
Government sales	7
Non-startup or start-up	5
PP&E total assets	≤ 3
PP&E/sales	≤ 3
SG&A/sales	≤ 3
Financial distress	
Bankruptcy	51
Unfavorable auditor's opinion	34
Losses in one or more years	10
Other	6

Adjusting Comparables

After the comparables have been selected, the regulations require that “[i]f there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results.” Treas. Reg. § 1.482-1(d)(2). In almost all cases involving income-statement-based PLIs used in the CPM or the Residual Profit Split Method, certain “asset intensity” or “balance sheet” adjustments for factors that have generally agreed-upon effects on profits are calculated. In addition, in specific cases, additional adjustments are performed to improve reliability.

The most common balance sheet adjustments used in APAs are adjustments for differences in accounts receivable, inventories, and accounts payable. The APA Program generally has required adjustments for receivables, inventory, and payables based on the principle that there is an opportunity cost for holding assets. For these assets, it is generally assumed that the cost is appropriately measured by the interest rate on short-term debt.

To compare the profits of two business activities with different relative levels of receivables, inventory, or payables, the APA Program estimates the carrying costs of each item and adjusts profits accordingly. Although different formulas have been used in specific APA cases, Attachment B presents one set of formulas used in many APAs. Underlying these formulas are the notions that (1) balance sheet items normally should be expressed as mid-year averages, (2) formulas should try to avoid using data items that are being tested by the TPM (for example, if sales are controlled, then the denominator of the balance sheet ratio should not be sales), (3) a short term interest rate should be used, and (4) an interest factor should recognize the average holding period of the relevant asset. As in 2007 and 2008, during the course of 2009, the APA Program used an interest rate equal to LIBOR (3 months) plus 200 basis points for purposes of calculating adjustments for accounts receivable and accounts payable for U.S. companies in many cases. In addition, the APA Program often used an interest rate equal to the Corporate Bonds (Moody's) Baa rate for purposes of calculating inventory adjustments for U.S. companies. However, the facts and circumstances surrounding a given case will ultimately determine the reliability of making balance sheet adjustments and the selection of the most reliable interest rate.

The APA Program also requires that financial data be compared on a consistent accounting basis. For example, although financial statements may be prepared on a first-in first-out (FIFO) basis, cross-company comparisons are less meaningful if one or more of the comparables use last-in first-out (LIFO) inventory accounting methods. This adjustment directly affects costs of goods sold and inventories, and therefore affects both profitability measures and inventory adjustments.

In some cases, the APA Program has made an adjustment to account for differences in relative levels of PP&E between a tested business activity and the comparables. Ideally, comparables and the business activity being tested will have fairly similar relative levels of PP&E, since major differences can be a sign of fundamentally different functions and risks. Typically, the PP&E adjustment is made using a medium-term interest rate. During the course of 2009, the APA Program often used the Corporate Bonds (Moody's) Baa rate as the interest rate for purposes of calculating adjustments for inventory and PP&E for U.S. companies. Again, however, the facts and circumstances surrounding a given case will ultimately determine the reliability of making balance sheet adjustments and the selection of the most reliable interest rate.

Additional adjustments used less frequently include those for differences in other balance sheet items, operating expenses, R&D, or currency risk. Accounting adjustments, such as reclassifying items from cost of goods sold to operating expenses, are also made when warranted to increase reliability. Often, data are not available for both the controlled and uncontrolled transactions in sufficient detail to allow for these types of adjustments.

The adjustments made to comparables or tested parties in APAs executed in 2009 are reflected in Table 24 above.

Ranges, Targets, and Adjustment Mechanisms [§ 521(b)(2)(D)(viii)-(ix)]

The types of ranges, targets, and adjustment mechanisms used in APAs executed in 2009 are described in Tables 26 and 27 below.

TABLE 26: RANGES AND TARGETS¹³

Type of Range	Number
Interquartile range	50
Specific point within CPM range (not floor or ceiling)	21
Cost-only services	11
Other	9
Specific point (royalty)	7
Full range	≤ 3
Ceiling (<i>i.e.</i> , result must be no more than x)	≤ 3

¹³ The numbers do not include TPMs with cost or cost-plus methodologies.

TABLE 27: ADJUSTMENTS WHEN OUTSIDE THE RANGE

Adjustment mechanism	Number
Taxpayer makes an adjustment: to specified point or royalty rate	40
Taxpayer makes an adjustment: to closest edge of multi-year average	29
Taxpayer makes an adjustment based on subsequent Competent Authority negotiations	6
Taxpayer makes an adjustment: to median of multi-year average	5
Taxpayer makes an adjustment: to closest edge of single year	5
Taxpayer makes an adjustment: to a specific dollar amount	≤ 3
Taxpayer makes an adjustment: to median of current year	≤ 3

Discussion

Treas. Reg. § 1.482-1(e)(1) states that sometimes a pricing method will yield “a single result that is the most reliable measure of an arm’s length result.” Sometimes, however, a method may yield “a range of reliable results,” called the “arm’s length range.” A taxpayer whose results fall within the arm’s length range will not be subject to adjustment.

Under Treas. Reg. § 1.482-1(e)(2)(i), such a range is normally derived by considering a set of more than one comparable uncontrolled transaction of similar comparability and reliability. If these comparables are of very high quality, as defined in the section 482 regulations, then under Treas. Reg. § 1.482-1(e)(2)(iii)(A), the arm’s length range includes the results of all of the comparables (from the least to the greatest). However, the APA Program has only rarely identified cases meeting the requirements for the full range. If the comparables are of lesser quality, then under Treas. Reg. § 1.482-1(e)(2)(iii)(B), “the reliability of the analysis must be increased, when it is possible to do so, by adjusting the range through application of a valid statistical method to the results of all of the uncontrolled comparables.” One such method, the “interquartile range,” is ordinarily acceptable, although a different statistical method “may be applied if it provides a more reliable measure.” The interquartile range is defined as, roughly, the range from the 25th to the 75th percentile of the comparables’ results. See Treas. Reg. § 1.482-1(e)(2)(iii)(C). The interquartile range was used 50 times in 2009.

Twenty-eight Covered Transactions reflected on Table 26 were tested against a single, specific result. Some APAs — deliberately infrequent — specify not a point or a range, but a “floor” or a “ceiling.” When a floor is used, the tested party’s result must be greater than or equal to some particular value. When a ceiling is used, the tested party’s result must be less than or equal to some particular value. Three or fewer APAs executed in 2009 used a floor or a ceiling.

Some APAs look to a tested party’s results over a period of years (multi-year averaging) to determine whether a taxpayer has complied with the APA. In 2009, rolling multi-year averaging was used for four Covered Transactions. All four of these Covered Transactions used four-year averages. Two Covered Transactions used cumulative multi-year averaging, while 42 Covered Transactions used term averages and seven Covered Transactions used partial-term averages.

Adjustments

Where a taxpayer’s actual transactions do not produce results that conform to the TPM, a taxpayer must nonetheless report its taxable income in an amount consistent with the TPM (an APA primary adjustment), as further discussed in § 11.02 of Rev. Proc. 2006-09. When the TPM specifies an arm’s length range, an APA primary adjustment is necessary only if the taxpayer’s actual transactional result falls outside the specified range.

Under Treas. Reg. § 1.482-1(e)(3), if a taxpayer’s results fall outside the arm’s length range, the Service may adjust the result “to any point within the arm’s length range.” Accordingly, an APA may permit or require a taxpayer to make an adjustment after the year’s end to put the year’s results within the range, or at the point specified by the APA. Similarly, to enforce the terms of an APA, the Service may make such an adjustment. When the APA specifies a range, the adjustment is sometimes to the closest edge of the range, and sometimes to another point such as the median of the interquartile range. Depending on the facts of each case, automatic adjustments are not always permitted. APAs may specify that in such a case there will be a negotiation between the competent authorities involved to determine whether and to what extent an adjustment should be made. APAs may permit automatic adjustments unless the result is far outside the range specified in the APA. Thus, APAs provide flexibility and efficiency, permitting adjustments when normal business fluctuations and uncertainties push the result somewhat outside the range.

APA Term and Rollback Lengths
[§ 521(b)(2)(D)(x)]

The various term lengths for APAs executed in 2009 are set forth in Table 28 below:

TABLE 28: TERMS OF APAs

APA Term in Years	Number of APAs
3	≤ 3
4	8
5	27
6	13
7	4
8	7
9	≤ 3
10 or more	≤ 3

The number of rollback years to which an APA TPM was applied in 2009 is set forth in Table 29 below:

TABLE 29: NUMBER OF YEARS COVERED BY ROLLBACK OF APA TPM

Number of Rollback Years	Number of APAs
1	≤ 3
2	5
3	7
4	5
5 or more	≤ 3

Together, Tables 28 and 29 indicate that the 63 APAs completed in 2009 covered more than 410 taxable years. In terms of dollar value, 46 of the 63 completed APAs involved Covered Transactions exceeding \$100 million per year, with 34 APAs covering transactions exceeding \$250 million per year. Combining the total covered years and the total dollar-value of Covered Transactions represents one measure of the effectiveness of the APA Program.

Nature of Documentation Required
[§ 521(b)(2)(D)(xi)]

APAs executed in 2009 required that taxpayers provide various documents with their annual reports. These documents are described in Table 30 below:

TABLE 30: NATURE OF DOCUMENTATION REQUIRED

Documentation	Number
Statement identifying all material differences between Taxpayer's business operations during APA Year and description of Taxpayer's business operations contained in Taxpayer's request for APA, or if there have been no such material differences, a statement to that effect.	63
Statement of all material changes in the Taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for the APA. If there has been no material change in accountings methods and classifications or methods of estimation, a statement to that effect.	63
Description of any failure to meet Critical Assumptions or, if there have been none, a statement to that effect.	63
Copy of the APA	63
Financial analysis demonstrating Taxpayer's compliance with TPM.	63
Organizational chart	63
Any change to the taxpayer notice information in section 14 of the APA.	63
The amount, reason for, and financial analysis of any compensating adjustment under Paragraph 4 of Appendix A and Rev. Proc. 2006-9, § 11.02(3), for the APA year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of the Taxpayer's group that is relevant to the APA.	63
The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. return for the APA Year.	63
Financial Statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent CPA required by paragraph 5(f) of the APA.	63
Certified public accountant's opinion that financial statements present fairly the financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP.	5
CPA review of Taxpayer's financial statements	5
Other	4
Financial statements prepared in accordance with a foreign GAAP.	≤ 3
Pertinent intercompany agreements	≤ 3
Various work papers	≤ 3

Approaches for Sharing of Currency or Other Risks

[§ 521(b)(2)(D)(xii)]

During 2009, there were 30 tested parties that faced financial risks, including interest rate and currency risks. In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

Efforts to Ensure Compliance with APAs

[§ 521(b)(2)(F)]

As described in Rev. Proc. 2006-09, § 11.01, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through annual report review, the APA Program monitors taxpayer compliance with the APA on a contemporaneous basis. Annual report review provides current information on the success or problems associated with the various TPMs adopted in the APA process.

All reports received by the APA Program are assigned to a designated APA team leader. Whenever possible, annual report reviews are assigned to the team leader who negotiated the case, since that person will already be familiar with the relevant facts and terms of the agreement. Other team leaders and economists may assist the assigned team leader as well. Once received by the APA Program, the annual report is also sent to the field personnel with exam jurisdiction over the taxpayer.

The statistics for the review of APA annual reports are reflected in Table 31 below. As of December 31, 2009, there were 259 pending annual reports. In 2009, 414 reports were closed.

TABLE 31: STATISTICS OF ANNUAL REPORTS

Number of APA annual reports pending as of December 31, 2009	259
Number of APA annual reports closed in 2009	414
Number of APA annual reports requiring adjustment in 2009	7
Number of taxpayers involved in adjustments	7
Number of APA annual report cases over one-year old	186

Attachment A
Model APA — Based on Revenue Procedure 2006–9

ADVANCE PRICING AGREEMENT
between
[Insert Taxpayer's Name]
and
THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer's Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as "Taxpayer"), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer's principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties' agreement on the best method for determining arm's-length prices of the Covered Transactions under I.R.C. section 482, any applicable tax treaties, and the Treasury Regulations.

[If renewal, add] [Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).
4. *Operation.*
 - a. Revenue Procedure 2006–9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006–9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for an APA Year is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. {Insert when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each taxable year covered by this APA (APA Year), if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.

d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

- i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
- ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or
- iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, an independent certified public accountant must *{use the following or an alternative}* render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain its APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the IRS Associate Chief Counsel (International) to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

Taxpayer Corporation
Attn: Jane Doe, Sr. Vice President (Taxes)
1000 Any Road
Any City, USA 10000
(phone: _____)

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____
Jane Doe
Sr. Vice President (Taxes)

Date: _____, 20 _____

IRS

By: _____
Craig A. Sharon
Director, Advance Pricing Agreement Program

Date: _____, 20 _____

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

• CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

• CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between _____% and _____% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

• Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

- **Cost Plus Method**

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations section 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ____ and the Median of the Arm's Length Range is ____%.

- **CPM with Berry Ratio PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations section 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between ____ and ____, and the Median of the Arm's Length Range is ____.

- **CPM using an Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

- **CPM using a Three-year Rolling Average Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulations section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulations section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

- **Residual Profit Split Method**

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

3. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

- (a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and
- (b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

4. APA Revenue Procedure Treatment

If Taxpayer makes a primary adjustment under the terms of this Appendix A, Taxpayer may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9.

[Insert additional provisions as needed.]

APPENDIX B

CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of:

1. All documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report will include two copies of a properly completed APA Annual Report Summary in the form of Exhibit E to this APA, one copy of the form bound with, and one copy bound separately from, the rest of the Annual Report. In addition, the Annual Report will include a table of contents and the information and exhibits identified below, organized as follows.

1. Statements that fully identify, describe, analyze, and explain:

a. All material differences between any of the U.S. Entities' business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year and the description of the business operations contained in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.

b. All material changes in the U.S. Entities' accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for this APA. If any such change was made to conform to changes in U.S. GAAP (or other relevant accounting standards), Taxpayer will specifically identify such change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.

c. Any change to the Taxpayer notice information in section 14 of this APA.

d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.

e. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.

f. The amount, reason for, and financial analysis of any compensating adjustments under paragraph 4 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:

i. the amounts paid or received by each affected entity;

ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return; and

iii. the date(s) and means by which the payments are or will be made.

g. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.

2. The Financial Statements, and any necessary account detail to show compliance with the TPM, with a copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

3. A financial analysis that reflects Taxpayer’s TPM calculations for the APA Year. The calculations must reconcile with and reference the Financial Statements in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.
4. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.
5. A copy of the APA.

APPENDIX D

DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	A report within the meaning of Revenue Procedure 2006–9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106–170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006–9	Rev. Proc. 2006–9, 2006–1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulations section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership:</i> For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031. }
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader has supplied some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

APA Annual Report SUMMARY	Department of the Treasury— Internal Revenue Service Office of Associate Chief Counsel (International) Advance Pricing Agreement Program	APA no. _____ Team Leader _____ Economist _____ Intl Examiner _____ CA Analyst _____
--	---	--

APA Information	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 200__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year. Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50–100 million <input type="checkbox"/> \$100–250 million <input type="checkbox"/> \$250–500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point
------------------------	---

APA Annual Report Information (to be completed by the Taxpayer)	APA date executed: _____, 200____		
	This APA Annual Report Summary is for APA Year(s) ending in 200____ and was filed on _____, 200____		
	Check here <input type="checkbox"/> if Annual Report was filed after original due date but in accordance with extension.		
	Has this APA been amended or changed? <input type="checkbox"/> yes <input type="checkbox"/> no Effective Date: _____		
	Has Taxpayer complied with all APA terms and conditions? <input type="checkbox"/> yes <input type="checkbox"/> no		
	Were all the critical assumptions met? <input type="checkbox"/> yes <input type="checkbox"/> no		
	Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report? <input type="checkbox"/> yes <input type="checkbox"/> no If yes, which year(s): 200____		
	Have any necessary Secondary Compensating Adjustments been made? <input type="checkbox"/> yes <input type="checkbox"/> no		
	Did Taxpayer elect APA Revenue Procedure treatment? <input type="checkbox"/> yes <input type="checkbox"/> no		
	Any change to the entity classification of a party to the APA? <input type="checkbox"/> yes <input type="checkbox"/> no		
Taxpayer notice information contained in the APA remains unchanged? <input type="checkbox"/> yes <input type="checkbox"/> no			
Taxpayer's current US principal place of business: (City, State) _____			

APA Annual Report Checklist of Key Contents (to be completed by the Taxpayer)	Financial analysis reflecting TPM calculations <input type="checkbox"/> yes <input type="checkbox"/> no	
	Financial statements showing compliance with TPM(s) <input type="checkbox"/> yes <input type="checkbox"/> no	
	Schedule M-1 or M-3 book-tax differences <input type="checkbox"/> yes <input type="checkbox"/> no	
	Current organizational chart of relevant portion of world-wide group <input type="checkbox"/> yes <input type="checkbox"/> no	
	Attach copy of APA <input type="checkbox"/> yes <input type="checkbox"/> no	
	Other APA records and documents included: <i>[The information required in the following section should be tailored to the particular case]</i>	
	_____	<input type="checkbox"/> yes <input type="checkbox"/> no
	_____	<input type="checkbox"/> yes <input type="checkbox"/> no
	_____	<input type="checkbox"/> yes <input type="checkbox"/> no
	_____	<input type="checkbox"/> yes <input type="checkbox"/> no
_____	<input type="checkbox"/> yes <input type="checkbox"/> no	

Contact Information	Authorized Representative	Phone Number	Affiliation and Address
	_____	_____	_____

ATTACHMENT B

EXAMPLE FORMULAS FOR BALANCE SHEET ADJUSTMENTS

The formulas below provide examples of the balance sheet adjustment formulas used in the APA Program's CPM spreadsheet model.¹⁴ The formulas below are applicable to the operating margin profit level indicator. The APA Program's calculations measure balance sheet intensity by reference to the denominator of the profit level indicator (*e.g.*, for the Berry ratio, the denominator used is operating expenses). Therefore, the formulas vary for each profit level indicator.

Definitions of Variables:

AP	=	average accounts payable
AR	=	average trade accounts receivable, net of allowance for bad debt
cogs	=	cost of goods sold
INV	=	average inventory, stated on FIFO basis
opex	=	operating expenses (general, sales, administrative, and depreciation expenses)
PPE	=	property, plant, and equipment, net of accumulated depreciation
sales	=	net sales
h	=	average accounts payable or trade accounts receivable holding period, stated as a fraction of a year
i	=	interest rate
t	=	entity being tested
c	=	comparable

Equations:

Example Assuming Profit Level Indicator is Operating Margin:

Receivables Adjustment ("RA"):

$$RA = \{[(AR_t / sales_t) \times sales_c] - AR_c\} \times \{i/[1+(i \times h_c)]\}$$

Payables Adjustment ("PA"):

$$PA = \{[(AP_t / sales_t) \times sales_c] - AP_c\} \times \{i/[1+(i \times h_c)]\}$$

Inventory Adjustment ("IA"):

$$IA = \{[(INV_t / sales_t) \times sales_c] - INV_c\} \times i$$

PP&E Adjustment ("PPEA"):

$$PPEA = \{[(PPE_t / sales_t) \times sales_c] - PPE_c\} \times i$$

Then Adjust Comparables as Follows:

$$\text{adjusted sales}_c = \text{sales}_c + RA$$

$$\text{adjusted cogs}_c = \text{cogs}_c + PA - IA$$

$$\text{adjusted opex}_c = \text{opex}_c - PPEA$$

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2010-24

The Internal Revenue Service has revoked its determination that the organi-

zations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an or-

ganization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, con-

¹⁴ Copies of the APA Program's CPM spreadsheet model are available from the APA Program by calling (202) 435-5220 (not a toll-free number) or by writing to the Office of Associate Chief Counsel (International), Advance Pricing Agreement Program, Attn: CC:INTL:APA, MA2-266, 1111 Constitution Ave., NW, Washington DC, 20224.

tributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 12, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For

individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Alpha Assistance, Inc.
Desoto, TX & Norcross, GA
DPA Alliance Corporation
Provo, UT
Interpreter Referral Service
Chicago, IL
Knapp Foundation
Provo, UT

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2010-25

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Cen-

sured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these

situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which

requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, § 10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
Huntington Beach	Crandall, Jeffrey D.	Enrolled Agent	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. §§ 1341, 1343, and 1346 and 2, mail fraud, wire fraud, honest services fraud, and aiding and abetting)	Indefinite from February 24, 2010
Palo Alto	Gonzales, Juanita	Enrolled Agent	Suspended by decision on appeal for violation of § 10.51 (failure to timely file Federal tax returns)	Indefinite from November 10, 2008, but at least 36 months
Sierra Madre	Libman, Arnold C.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7206(2), aiding in the preparation and presentation of fraudulent return)	Indefinite from January 12, 2010
Long Beach	Scott, Robert K.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 17, 2010
Riverside	Washington, Shawn	CPA	Suspended by consent for admitted violations of § 10.51 (failure to file and failure to timely file Federal tax returns and failure to fully pay Federal employment taxes)	Indefinite from December 4, 2009, but at least 24 months

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Connecticut				
Watertown	Ariola, Thomas M.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 666, bribery concerning a program receiving federal funds; 18 U.S.C. § 371, conspiracy to defraud the Internal Revenue Service; and 2 U.S.C. §§ 441 and 437, illegal corporate, personal political, and contributions)	Indefinite from February 24, 2010
Florida				
Orlando	Collazo, Humberto N.	Enrolled Agent	Suspended by default decision in expedited proceeding under §10.82 (permanently enjoined by U.S. District Court from preparing returns that include frivolous positions and from other activities)	Indefinite from February 24, 2010
Naples	Gramer, Gary W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment in New York)	Indefinite from February 12, 2010
Illinois				
Godfrey	Johnson, Ralph D.	Enrolled Agent	Suspended by decision in expedited proceeding under §10.82 (permanently enjoined by U.S. District Court from preparing returns that include frivolous positions and from other activities)	Indefinite from February 12, 2010
Louisiana				
West Monroe	Hooever, Gary D.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7207, fraudulent returns, statements, or other documents)	Indefinite from February 12, 2010

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Maryland				
Owings Mills	Foltz, III, Richard N.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from February 12, 2010
	Gilland, Michael, B., See Pennsylvania			
Massachusetts				
Brookline	Allen, Peter A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from February 12, 2010
Duxbury	Kilduff, Kevin	Attorney	Suspended by decision on appeal for violation of § 10.51 (failure to file a Federal tax return and failure to timely file Federal tax returns for five years)	Indefinite from January 20, 2010, but at least 48 months
Milton	Richard, Joyce A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from February 12, 2010
Missouri				
St. Louis	Coon, Jr., Eugene E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from February 12, 2010
New Hampshire				
	Wyatt, Jr., Donald L., See Texas			
New York				
	Gramer, Gary W., See Florida			

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
New York (Continued)				
Brooklyn	Nissenbaum, Martin	Attorney	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 371, conspiracy to defraud the U.S. by impeding the IRS, evading taxes, and making materially false statements under U.S. Govt. jurisdiction; 26 U.S.C. §§ 7201, tax evasion; and 7212, obstructing the IRS)	Indefinite from February 25, 2010
Rye Brook	Shapiro, Richard J.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 371, conspiracy to defraud the U.S. by impeding the IRS, evading taxes, and making materially false statements under U.S. Govt. jurisdiction, and 26 U.S.C. § 7201, tax evasion)	Indefinite from February 25, 2010
Oregon				
Milwaukie	Stapleton, Gary D.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from January 22, 2010
Pennsylvania				
York	Gilland, Michael B.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment in Maryland)	Indefinite from February 12, 2010
Tennessee				
Nashville	Weed, David S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from January 22, 2010

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Texas				
Heath	Dicus, Brian G.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from January 22, 2010
San Antonio	Green, Bret C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from January 22, 2010
Dallas	Olsen, Edwin C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from January 22, 2010
Austin	Phillips, Travis R.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from January 22, 2010
The Woodlands	Wyatt, Jr., Donald L.	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license in New Hampshire)	Indefinite from February 12, 2010
Vermont				
Newport	Heath, Kenneth J.	CPA	Disbarred by consent for admitted violation of §§ 10.51(a)(3) and 10.51(a)(10) (conviction of a felony under Federal or state law for which the conduct involved renders the practitioner unfit to practice before the IRS, and revocation of CPA license)	Indefinite from January 19, 2010, but at least 60 months
Wyoming				
Jackson	McDaniel, John C.	CPA	Suspended by ALJ default decision for violation of § 10.51 (willful failure to timely file three Federal tax returns)	Indefinite from December 30, 2009, but at least 24 months

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2010–1 through 2010–15

Announcements:

2010-1, 2010-4 I.R.B. 333
2010-2, 2010-2 I.R.B. 271
2010-3, 2010-4 I.R.B. 333
2010-4, 2010-5 I.R.B. 384
2010-5, 2010-6 I.R.B. 402
2010-6, 2010-6 I.R.B. 402
2010-7, 2010-6 I.R.B. 403
2010-8, 2010-7 I.R.B. 408
2010-9, 2010-7 I.R.B. 408
2010-10, 2010-7 I.R.B. 410
2010-11, 2010-10 I.R.B. 438
2010-12, 2010-7 I.R.B. 410
2010-13, 2010-8 I.R.B. 426
2010-14, 2010-11 I.R.B. 449
2010-15, 2010-10 I.R.B. 438
2010-16, 2010-11 I.R.B. 450
2010-17, 2010-13 I.R.B. 515
2010-18, 2010-12 I.R.B. 460
2010-19, 2010-14 I.R.B. 529
2010-20, 2010-15 I.R.B. 551
2010-21, 2010-15 I.R.B. 551
2010-24, 2010-15 I.R.B. 587
2010-25, 2010-15 I.R.B. 588

Notices:

2010-1, 2010-2 I.R.B. 251
2010-2, 2010-2 I.R.B. 251
2010-3, 2010-2 I.R.B. 253
2010-4, 2010-2 I.R.B. 253
2010-5, 2010-2 I.R.B. 256
2010-6, 2010-3 I.R.B. 275
2010-7, 2010-3 I.R.B. 296
2010-8, 2010-3 I.R.B. 297
2010-9, 2010-3 I.R.B. 298
2010-10, 2010-3 I.R.B. 299
2010-11, 2010-4 I.R.B. 326
2010-12, 2010-4 I.R.B. 326
2010-13, 2010-4 I.R.B. 327
2010-14, 2010-5 I.R.B. 344
2010-15, 2010-6 I.R.B. 390
2010-16, 2010-6 I.R.B. 396
2010-17, 2010-14 I.R.B. 519
2010-18, 2010-14 I.R.B. 525
2010-19, 2010-7 I.R.B. 404
2010-20, 2010-8 I.R.B. 422
2010-21, 2010-12 I.R.B. 451
2010-22, 2010-10 I.R.B. 435
2010-23, 2010-11 I.R.B. 441
2010-24, 2010-12 I.R.B. 452
2010-25, 2010-14 I.R.B. 527
2010-26, 2010-14 I.R.B. 527

Notices— Continued:

2010-27, 2010-15 I.R.B. 531
2010-28, 2010-15 I.R.B. 541
2010-29, 2010-15 I.R.B. 547

Proposed Regulations:

REG-132232-08, 2010-6 I.R.B. 401
REG-137036-08, 2010-6 I.R.B. 398
REG-101896-09, 2010-5 I.R.B. 347
REG-117501-09, 2010-11 I.R.B. 442
REG-131028-09, 2010-4 I.R.B. 332
REG-148681-09, 2010-11 I.R.B. 443

Revenue Procedures:

2010-1, 2010-1 I.R.B. 1
2010-2, 2010-1 I.R.B. 90
2010-3, 2010-1 I.R.B. 110
2010-4, 2010-1 I.R.B. 122
2010-5, 2010-1 I.R.B. 165
2010-6, 2010-1 I.R.B. 193
2010-7, 2010-1 I.R.B. 231
2010-8, 2010-1 I.R.B. 234
2010-9, 2010-2 I.R.B. 258
2010-10, 2010-3 I.R.B. 300
2010-11, 2010-2 I.R.B. 269
2010-12, 2010-3 I.R.B. 302
2010-13, 2010-4 I.R.B. 329
2010-14, 2010-12 I.R.B. 456
2010-15, 2010-7 I.R.B. 404
2010-17, 2010-8 I.R.B. 425
2010-18, 2010-9 I.R.B. 451
2010-19, 2010-13 I.R.B. 469
2010-20, 2010-14 I.R.B. 528
2010-21, 2010-13 I.R.B. 473

Revenue Rulings:

2010-1, 2010-2 I.R.B. 248
2010-2, 2010-3 I.R.B. 272
2010-3, 2010-3 I.R.B. 272
2010-4, 2010-4 I.R.B. 309
2010-5, 2010-4 I.R.B. 312
2010-6, 2010-6 I.R.B. 387
2010-7, 2010-8 I.R.B. 417
2010-8, 2010-10 I.R.B. 432
2010-9, 2010-13 I.R.B. 461
2010-10, 2010-13 I.R.B. 461
2010-11, 2010-14 I.R.B. 516

Treasury Decisions:

9474, 2010-4 I.R.B. 322
9475, 2010-4 I.R.B. 304
9476, 2010-5 I.R.B. 336
9477, 2010-6 I.R.B. 385
9478, 2010-4 I.R.B. 315
9480, 2010-11 I.R.B. 439

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2010–1 through 2010–15

Announcements:

2009-51

Supplemented and superseded by
Ann. 2010-16, 2010-11 I.R.B. 450

2010-4

Corrected by
Ann. 2010-10, 2010-7 I.R.B. 410

Notices:

2005-88

Superseded by
Notice 2010-13, 2010-4 I.R.B. 327

2006-87

Superseded by
Notice 2010-27, 2010-15 I.R.B. 531

2007-25

Superseded by
Notice 2010-27, 2010-15 I.R.B. 531

2007-77

Superseded by
Notice 2010-27, 2010-15 I.R.B. 531

2008-41

Modified by
Notice 2010-7, 2010-3 I.R.B. 296

2008-55

Modified by
Notice 2010-3, 2010-2 I.R.B. 253

2008-88

Modified by
Notice 2010-7, 2010-3 I.R.B. 296

2008-107

Superseded by
Notice 2010-27, 2010-15 I.R.B. 531

2008-113

Modified by
Notice 2010-6, 2010-3 I.R.B. 275

2008-115

Modified by
Notice 2010-6, 2010-3 I.R.B. 275

2009-11

Amplified by
Notice 2010-9, 2010-3 I.R.B. 298

2009-13

Obsoleted by
T.D. 9478, 2010-4 I.R.B. 315
REG-131028-09, 2010-4 I.R.B. 332

Notices— Continued:

2009-35

Supplemented by
Notice 2010-17, 2010-14 I.R.B. 519

2009-38

Amplified and superseded by
Notice 2010-2, 2010-2 I.R.B. 251

2009-62

Modified and supplemented by
Notice 2010-23, 2010-11 I.R.B. 441

Proposed Regulations:

REG-127270-06

Hearing scheduled by
Ann. 2010-6, 2010-6 I.R.B. 402

Revenue Procedures:

80-59

Modified and superseded by
Rev. Proc. 2010-11, 2010-2 I.R.B. 269

87-35

Obsoleted by
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

2008-14

Updated by
Rev. Proc. 2010-15, 2010-7 I.R.B. 404

2009-1

Superseded by
Rev. Proc. 2010-1, 2010-1 I.R.B. 1

2009-2

Superseded by
Rev. Proc. 2010-2, 2010-1 I.R.B. 90

2009-3

Superseded by
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

2009-4

Superseded by
Rev. Proc. 2010-4, 2010-1 I.R.B. 122

2009-5

Superseded by
Rev. Proc. 2010-5, 2010-1 I.R.B. 165

2009-6

Superseded by
Rev. Proc. 2010-6, 2010-1 I.R.B. 193

2009-7

Superseded by
Rev. Proc. 2010-7, 2010-1 I.R.B. 231

2009-8

Superseded by
Rev. Proc. 2010-8, 2010-1 I.R.B. 234

Revenue Procedures— Continued:

2009-9

Superseded by
Rev. Proc. 2010-9, 2010-2 I.R.B. 258

2009-15

Amplified and superseded by
Rev. Proc. 2010-12, 2010-3 I.R.B. 302

2009-17

Superseded by
Rev. Proc. 2010-21, 2010-13 I.R.B. 473

2009-25

Superseded by
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

2009-55

Corrected by
Ann. 2010-11, 2010-10 I.R.B. 438

2010-1

Corrected by
Ann. 2010-5, 2010-6 I.R.B. 402

Revenue Rulings:

67-436

Obsoleted by
REG-101896-09, 2010-5 I.R.B. 347

92-19

Supplemented in part by
Rev. Rul. 2010-7, 2010-8 I.R.B. 417

2008-52

Supplemented and superseded by
Rev. Rul. 2010-2, 2010-3 I.R.B. 272

Treasury Decisions:

9424

Corrected by
Ann. 2010-18, 2010-12 I.R.B. 460

9443

Corrected by
Ann. 2010-8, 2010-7 I.R.B. 408

9458

Corrected by
Ann. 2010-7, 2010-6 I.R.B. 403

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.



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